



Comparison of Proposed  
Revision of the  
Judicature Act

With the Judicature Act,  
R.S.O. 1970, Chap. 228

As well as Certain of the  
Rules of Practice, R.R.O.  
1970, reg. 545

KF      Comparison of proposed revision of  
8816     the Judicature Act with the Judicature  
ZB3     Act, R.S.O., 1970, Chap. 228  
C65  
1980

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COMPARISON OF

PROPOSED REVISION OF THE JUDICATURE ACT

WITH

THE JUDICATURE ACT, R.S.O. 1970, CHAP. 228

AS WELL AS CERTAIN OF THE  
RULES OF PRACTICE, R.R.O. 1970, REG. 545

OCTOBER 1980

COMPARISON OF THE PROPOSED JUDICATURE ACT TO THE PROVISIONS UNDER THE CURRENT STATUTE ACCORDING  
TO THE TABLE OF CONCORDANCE. ON THE BASIS OF THIS TABLE IT WOULD APPEAR THAT THE FOLLOWING SECTIONS  
HAVE BEEN OMITTED.

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# THE JUDICATURE ACT

## THE JUDICATURE ACT

no change	}	
change in form	}	
change	)	comparison
new	)	
omitted	)	

New Section

Old Section

Comparison

New Section      Old Section      Comparison

PART I

NOTES

<u>Section 1</u>		
-	1(a) action	omitted
-	(b) cause	omitted
county	(c) county	change
county court	(d) county court	no change
-	(e) county town	omitted
Court of Appeal	(f) Court of Appeal	no change
defendant	(g) defendant	change
Divisional Court	(h) Divisional Court	change
finance committee	(i) Finance committee	no change
High Court	(j) High Court	no change

DEFINITIONS

Section 1

In this Act, unless the context otherwise requires,

*county* includes a district or a judicial district;

*county court* includes a district court;

*Court of Appeal* means the Court of Appeal for Ontario;

*defendant* includes a person against whom any proceeding is commenced;

*Divisional Court* means the Divisional Court of the High Court of Justice for Ontario;

*finance committee* means the finance committee appointed by the Lieutenant Governor in Council under this Act;

*High Court* means the High Court of Justice for Ontario;

Section 1

In this Act,

- (a) "action" means a civil proceeding commenced by writ or in such other manner as is prescribed by the rules;
- (b) "cause" includes an action, suit or other original proceeding between a plaintiff and a defendant;
- (c) "county" includes a district;
- (d) "county court" includes a district court;
- (e) "county town" includes a district town;
- (f) "Court of Appeal" means the Court of Appeal for Ontario;
- (g) "defendant" includes a person served with a writ of summons or process, or served with notice of, or entitled to attend a proceeding;
- (h) "Divisional Court" means the Divisional Court of the High Court;
- (i) "finance committee" means the finance committee appointed by the Lieutenant Governor in Council under this Act;
- (j) "High Court" means the High Court of Justice for Ontario;

NOTES

judge	(k) judge	change
judgment	(l) judgment	change
master	(m) master	change
personal property	-	new
-	(n)	omitted
-	(o) party	omitted
-	(p) petitioner	omitted

*judge* includes a justice, a Chief Justice, an Associate Chief Justice, an *ex officio* judge and a supernumerary judge;

*judgment* includes an order or a decree;

*master* means a master of the Supreme Court and includes the Senior Master, but does not include a local master;

*personal property* in Section 51 includes goods, chattels, deeds, bonds, bills of exchange, books of account, documents and securities, but does not include any interest in land.

(k) "judge" includes a chief justice, an associate chief justice, an *ex officio* judge and a supernumerary judge;  
 (l) "judgment" includes an order;

(m) "master" means a Master of the Supreme Court and includes the Senior Master;

(n) "matter" includes every proceeding in the court not in a cause;

(o) "party" includes a person served with notice of or attending a proceeding, although not named on the record;

(p) "petitioner" includes a person making an application to the court, either by petition, motion or summons, otherwise than as against a defendant;

NOTES

plaintiff	(q) plaintiff	change
-	(r) pleading	omitted
proceeding	-	new
-	(s) proper officer	omitted
rules	(t) rules	change
Rules Committee	(u) Rules Committee	no change
Supreme Court	(v) Supreme Court	no change

*plaintiff* includes a person who commences any proceeding;

*proceeding* includes any cause, action or matter;

*rules* means the Rules of Civil Procedure;

*Rules Committee* means the Rules Committee established under this Act;

*Supreme Court* means the Supreme Court of Ontario.

(q) "plaintiff" includes a person asking any relief otherwise than by way of counterclaim as a defendant against any other person by any form of proceeding;

(r) "pleading" includes a petition or summons, the statement in writing of the claim or demand of a plaintiff, of the defence of a defendant thereto, and of the reply of the plaintiff to a counterclaim of a defendant;

(s) "proper officer", where the expression is used with respect to a duty to be discharged under this Act or the rules and the duty has been discharged by a particular officer, means that officer and, where the expression is used in respect of a new duty under this Act or the rules, means the officer to whom the duty is assigned by this Act or by the rules, or, if it is not assigned to any officer, means such officer as from time to time directed to discharge the duty, if it relates to the Court of Appeal, by the Chief Justice of Ontario or, if it relates to the High Court, by the Chief Justice of the High Court;

(t) "rules" means the rules of court;

(u) "Rules Committee" means the Rules Committee established under this Act;

(v) "Supreme Court" means the Supreme Court of Ontario. R.S.O. 1960, c. 197, s. 1; 1970, c. 197, s. 1; 1972, c. 159, s. 1; 1975, c. 30, s. 1; 1979, c. 65, s. 1.

**INTERPRETATION****NOTES****Section 2**

(1) This Act shall be liberally construed so that all controversies may be speedily and finally determined according to the substantive rights of the parties. The rule that statutes in derogation of the common law must be strictly construed does not apply to this Act or to the rules made pursuant thereto.

(2) Any act in force immediately before the commencement of this Act which is inconsistent with it shall be superseded to the extent of such inconsistency.

(3) Subject to the express provisions of any act, the Crown is bound by, and has the benefit of, this Act and the rules made pursuant thereto.

(4) On the coming into force of this Act, unless the context otherwise requires, in every act,

*administrator ad litem* means litigation administrator;

*certificate of lis pendens* means certificate of pending litigation;

*guardian ad litem* means litigation guardian;

*next friend* means litigation guardian;

*originating motion* means application;

*originating notice* means notice of application;

*replevin order* means an interim order for the recovery of personal property;

*Rules of Practice and Procedure* means Rules of Civil Procedure;

*subpoena* includes summons to witness;

*third party proceeding* includes a cross-claim;

*Writ of Fieri Facias* means Writ of Seizure and Sale;

*Writ of Summons* means a Statement of Claim or a

NOTES

Section 3	Section 123	change
Section 4	Section 2	change in form
Section 5	Section 3	no change
Section 6(1), (2)	Section 4(1), (2)	no change

**Section 3**

This Part applies to the Supreme Court, and Sections 26, 28, 37, 38, 39 and 40 shall also apply, with any necessary modification, to the county courts.

**CONSTITUTION AND JUDGES OF THE SUPREME COURT**

**Section 4**

The Supreme Court shall continue to be a superior court of record, having civil and criminal jurisdiction, and it has all the jurisdiction, power and authority that on the coming into force of this Act, was vested in or might have been exercised by the court, and such jurisdiction, power and authority shall be exercised in the name of the Supreme Court.

**Section 5**

The Supreme Court shall continue to consist of two branches: the Court of Appeal for Ontario and the High Court of Justice for Ontario.

**Section 6**

(1) The Court of Appeal shall consist of a chief justice who shall be the president thereof and who shall be called the Chief Justice of Ontario, an Associate Chief Justice of Ontario, and thirteen other judges to be called justices of appeal.

(2) Where the Chief Justice of Ontario is absent from Ontario or where he is for any reason unable to act, his powers and duties as president of the Court of Appeal shall be exercised and performed by the Associate Chief Justice of Ontario or, where both are absent or unable to act, by the senior justice of appeal who is able to act.

**Section 123**

123. In addition to the provisions of this Act that are expressly made applicable to all courts or county courts or are otherwise by their terms so applicable, sections 27, 35, 38, 41, 56 to 58, 64 to 68, 79, 80, 82, 114a, 119 and 120, mutatis mutandis apply to the county courts. R.S.O. 1960, c. 197, s. 120; 1977, c. 51, s. 12.

**Section 2**

2. The Supreme Court shall be continued as a superior court of record, having civil and criminal jurisdiction, and it has all the jurisdiction, power and authority that on the 31st December, 1912, was vested in or might be exercised by the Court of Appeal or by the High Court of Justice or a divisional court of that court, and such jurisdiction, power and authority shall be exercised in the name of the Supreme Court. R.S.O. 1960, c. 197, s. 2.

**Section 3**

3. The Supreme Court shall continue to consist of two branches, the Court of Appeal for Ontario and the High Court of Justice for Ontario. R.S.O. 1960, c. 197, s. 3.

**Section 4**

4.—(1) The Court of Appeal shall consist of a chief justice who shall be the president thereof and who shall be called the Chief Justice of Ontario, an Associate Chief Justice of Ontario, and thirteen other judges to be called justices of appeal. R.S.O. 1960, c. 197, s. 4(1); 1974, c. 81, s. 1; 1977, c. 45, s. 1(1).

(2) Where the Chief Justice of Ontario is absent from the Judicial District of York or where he is for any reason unable to act, his powers and duties as president of the Court of Appeal shall be exercised and performed by the Associate Chief Justice of Ontario in his stead or, where both are absent or unable to act by the senior justice of appeal who is able to act. R.S.O. 1960, c. 197, s. 4(2); 1977, c. 45, s. 1(2).

NOTES

Section 7(1)	Section 5(1)	change
(2)	(2)	change in form
Section 8(1)	Section 6(1), (2)	change
(2)	-	new
Section 9	Section 5a	no change

**Section 7**

(1) The High Court of Justice shall consist of a chief justice who shall be the president thereof and who shall be called the Chief Justice of the High Court, an Associate Chief Justice of the High Court and forty-four other judges.

(2) Where the Chief Justice of the High Court is absent from Ontario or, where he is for any reason unable to act, his powers and duties shall be exercised and performed by the Associate Chief Justice of the High Court or, where both are absent or unable to act, by the senior judge of the High Court who is able to act.

**Section 8**

(1) There shall be a division of the High Court to be known as the Divisional Court of the High Court which shall consist of the Chief Justice of the High Court who shall be the president thereof and twelve members of the High Court who shall be assigned by the Chief Justice of the High Court for periods of not less than one year but who may, with their consent, be re-assigned for a further term which may be for less than one year.

(2) Where the Chief Justice of the High Court is absent from Ontario or where he is for any reason unable to act, his powers and duties as president of the Divisional Court shall be exercised and performed by the senior judge assigned to the Divisional Court who is able to act.

**Section 9**

For each office of judge of the Court of Appeal and of the High Court of Justice there shall be the additional office of supernumerary judge held by a judge of such court who has elected under the *Judges Act (Canada)* to hold office

**Section 5**

5.—(1) The High Court shall consist of a chief justice who shall be the president thereof and who shall be called the Chief Justice of the High Court, an Associate Chief Justice of the High Court, and forty other judges. R.S.O. 1960, c. 197, s. 5(1); 1970, c. 92, s. 1; 1976, c. 16, s. 1; 1976, c. 86, s. 1; 1977, c. 45, s. 201.

(2) Where the Chief Justice of the High Court is absent from Ontario or where he is for any reason unable to act, his powers shall be exercised and his duties performed by the Associate Chief Justice of the High Court in his stead or, where both are absent or unable to act, by the senior judge of the High Court who is able to act. R.S.O. 1960, c. 197, s. 5(2); 1977, c. 45, s. 2(2).

**Section 6**

6.—(1) There shall be a division of the High Court to be known as the Divisional Court of the High Court of Justice for Ontario consisting of the Chief Justice of the High Court who shall be president of the court and such other judges of the Divisional Court as may be designated by him from time to time.

(2) Every judge of the High Court is also a judge of the Divisional Court. 1970, c. 97, s. 2.

**Section 5a**

5a. For each office of judge of the Court of Appeal and of the High Court of Justice there shall be the additional office of supernumerary judge held by a judge of such court who has elected under the *Judges Act (Canada)* to hold office only as a supernumerary judge of that court. 1972, c. 159, s. 2.

NOTES

Section 10(1)	Section 8(1), (2), (2a)	change in form
(2)	(3), (4)	change
Section 11	Section 9	no change

**PRECEDENCE OF JUDGES****Section 10**

(1) The rank and precedence of the Chief Justices and Associate Chief Justices of the Supreme Court shall be as follows:

1. The Chief Justice of Ontario;
2. The Chief Justice of the High Court;
3. The Associate Chief Justice of Ontario;
4. The Associate Chief Justice of the High Court.

(2) The justices of appeal and the other judges have rank and precedence after the Associate Chief Justice of the High Court, and among themselves according to seniority of appointment.

**Section 11**

A judge appointed to the Court of Appeal or to the High Court is a judge of the Supreme Court and is *ex officio* a judge of the branch of which he is not a member; and, except where it is otherwise expressly provided, all the judges of the Supreme Court have in all respects equal jurisdiction, power and authority.

**Section 8**

8.—(1) The Chief Justice of Ontario has rank and precedence over all the other judges. R.S.O. 1960, c. 197, s. 6(1).

(2) The Chief Justice of the High Court has rank and precedence next after the Chief Justice of Ontario. R.S.O. 1960, c. 197, s. 6(2).

(2a) The Associate Chief Justice of Ontario has rank and precedence next after the Chief Justice of the High Court and the Associate Chief Justice of the High Court has rank and precedence next after the Associate Chief Justice of Ontario. 1977, c. 45, s. 3(1).

(3) The Justices of appeal and the other judges have rank and precedence after the Associate Chief Justice of the High Court, and among themselves according to seniority of appointment. R.S.O. 1960, c. 197, s. 6(3); 1972, c. 159, s. 3(1); 1977, c. 45, s. 3(2); 1979, c. 65, s. 2(1).

(4) (Repealed 1973, c. 65, s. 2(2).)

**Section 9**

9. A judge appointed to the Court of Appeal or to the High Court is a judge of the Supreme Court and is *ex officio* a judge of the branch of which he is not a member, and, except where it is otherwise expressly provided, all the judges of the Supreme Court have in all respects equal jurisdiction, power and authority. R.S.O. 1960, c. 197, s. 7.

NOTES

Section 12(1)	Section 10(1)	no change
(2)	(2)	change
Section 13(1)	Section 12	no change
(2)	Section 96(1)	change in form
(3)	(2)	no change

**OATH TO BE TAKEN BY JUDGES**

**Section 12**

(1) A judge, before entering on the duties of his office, shall take and subscribe the following oath:

*I do solemnly and sincerely promise and swear that I will duly and faithfully, and to the best of my skill and knowledge, execute the powers and trust reposed in me as .....*

*So help me God.*

(2) The oath shall be administered to a Chief Justice or an Associate Chief Justice before the Lieutenant Governor, to a justice of appeal by the Chief Justice of Ontario, and to a judge of the High Court by the Chief Justice of the High Court.

**Section 13**

(1) There shall be a seal for the Supreme Court which shall be approved by the Lieutenant Governor in Council.

(2) In the offices of the local registrars and deputy registrars such seals shall be used as the Lieutenant Governor in Council from time to time may direct, and they shall be impressed on every document issued out of such offices, and every such document and every exemplification and copy thereof purporting to be sealed with such a seal shall be received in evidence in all courts without further proof thereof.

(3) Until other seals are authorized by the Lieutenant Governor in Council, the seals in use shall continue to be used.

**Section 10**

10.—(1) A judge, before entering on the duties of his office, shall take and subscribe the following oath:

*I do solemnly and sincerely promise and swear that I will duly and faithfully, and to the best of my skill and knowledge, execute the powers and trust reposed in me as ..... So help me God.*

(2) The oath shall be administered to a chief justice before the Lieutenant Governor in Council, to a justice of appeal by the Chief Justice of Ontario, and to a judge of the High Court by the Chief Justice of the High Court, unless the Lieutenant Governor in Council in any case otherwise directs, and in that event before such officer or functionary and in such manner as the Lieutenant Governor in Council may direct. R.S.O. 1960, c. 197, s. 8.

**Section 12**

12. There shall be a seal for the Supreme Court which shall be approved by the Lieutenant Governor in Council. R.S.O. 1960, c. 197, s. 10.

**Section 96**

96.—(1) In the offices of the local registrars and deputy registrars such seals shall be used as the Lieutenant Governor in Council from time to time may direct and they shall be impressed on every writ and other document issued out of such offices, and every such writ and document and every exemplification and copy thereof purporting to be sealed with such a seal shall be received in evidence in all courts without further proof thereof.

(2) Until other seals are authorized by the Lieutenant Governor in Council, the seals in use shall continue to be used. R.S.O. 1960, c. 197, s. 93.

NOTES

## Section 14

## Section 16(1)

change

**SITTINGS****Section 14**

Except as otherwise provided in this Act or the rules, the courts and the judges thereof may sit and act, at any time and at any place, for the discharge of any duty that by any statute, or otherwise, is required to be discharged.

**Section 16**

16.—(1) Subject to the rules, the courts and the judges thereof, or any commissioner appointed under section 55, may sit and act, at any time and at any place, for the transaction of any part of the business of the courts, or of the judges or commissioner or for the discharge of any duty that by any statute, or otherwise, is required to be discharged.

NOTES

Section 15(1) (a), (b) (c), (d)	Section 29(1) (a), (b)(4)	change in form
(2)	-	new
(3)	(3)	no change

COURT OF APPEAL

Section 15

(1) Except as otherwise provided by statute and subject to the rules, an appeal, including an application for a new trial, lies to the Court of Appeal from:

- (a) any final judgment made by a judge of the High Court;
- (b) any judgment of the Divisional Court, on any question that is not a question of fact alone, with leave as provided by the rules.
- (c) any order for interim relief in respect of any claim made in a divorce proceeding; and
- (d) any final judgment of a local judge of the High Court in respect of any claim made in a divorce proceeding.

(2) The Court of Appeal also has jurisdiction as provided by any Act of the Parliament of Canada or of the Legislature.

(3) For the purposes of an appeal to the Supreme Court of Canada, the Court of Appeal for Ontario is and shall be the court of final resort in the Province of Ontario.

Section 29

29.—(1) Except where it is otherwise provided by statute and subject to the rules regulating the terms and conditions on which appeals may be brought, an appeal lies to the Court of Appeal from,

- (a) any final judgment or order of a judge of the High Court, whether at trial or otherwise; or
- (b) any judgment or order of the Divisional Court, with leave as provided by the rules, on any question that is not a question of fact alone, R.S.O. 1960, c. I-2, s. 26(1); 1970, c. I-2, ss. 4, 13(2); 1971, Vol. 2, c. I-2, s. 3; 1977, c. I-2, s. 2.

(2) The Court of Appeal also has jurisdiction as provided by any Act of the Parliament of Canada or of the Legislature.

(4) The Court of Appeal also has jurisdiction to hear and determine applications for new trials and applications to set aside verdicts and findings of juries in actions and matters tried or heard in the High Court.

NOTES

Section 16(1), (2)	Section 43(1), (2)	change
(3)	Section 16(2)	change
(4)	Section 46	change
(5)	Section 43(3)	change in form
(6)	(4)	no change

**Section 16**

(1) Except where otherwise provided by any Act or by the rules, every appeal to the Court of Appeal shall be heard before not fewer than three justices of appeal sitting together and always before an uneven number of justices.

(2) An appeal from an order for interim relief in respect of any claim made in a divorce proceeding shall be to the Court of Appeal without leave and shall be heard by one justice of appeal.

(3) The Court of Appeal shall sit at Toronto or elsewhere in Ontario as directed by the Chief Justice of Ontario.

(4) The Chief Justice of Ontario, when present, shall preside, and in his absence, the Associate Chief Justice of Ontario, and when both are absent, the senior justice of appeal who is present or a justice of appeal designated by the Chief Justice of Ontario shall preside.

(5) The Court of Appeal may sit in one or more panels as the Chief Justice of Ontario directs from time to time.

(6) The justices to sit from time to time and appeals to be heard shall be determined by the Chief Justice of Ontario.

**Section 43**

43.—(1) Except where otherwise provided, every appeal to the Court of Appeal shall be heard before not fewer than three justices of appeal sitting together, and always before an uneven number of justices. R.S.O. 1960, c. 197, s. 40(1).

(2) An appeal to the Court of Appeal from an interlocutory order for corioly relief under the Divorce Act (Canada) may be heard without leave before one justice of appeal sitting alone. 1968, c. 59, s. 2; 1970, c. 97, s. 5.

(3) The Court of Appeal may sit in one division or in two or more divisions as the Chief Justice of Ontario directs from time to time.

(4) The justices to sit from time to time and the appeals to be heard shall be determined by the Chief Justice of Ontario. R.S.O. 1960, c. 197, s. 40(2, 3).

**SECTION 16**

(2) Subject to subsection 1, the Court of Appeal shall sit at Toronto. R.S.O. 1960, c. 197, s. 14.

**Section 46**

46. The Chief Justice of Ontario, when present, shall preside and, in his absence, the senior justice present shall preside. R.S.O. 1960, c. 197, s. 43.

NOTES

<b>Section 17(1)</b>	<b>Section 44(1)</b>	no change
(2)	<b>Section 45</b>	change in form
(3)	<b>Section 44(2), (4) &amp;</b> <b>Section 15</b>	change

**Section 17**

(1) The Chief Justice of Ontario may assign any justice of appeal not sitting in the Court of Appeal to perform, in Toronto, the work of a judge of the High Court.

(2) Except as provided in subsection (1), no justice of appeal shall, without his consent, be assigned to or required to perform any duty except as such appertains to him as a member of the Court of Appeal.

(3) Whenever occasion requires or where a vacancy occurs in the Court of Appeal, a judge of the Supreme Court who is not a member of the Court of Appeal may, at the request of the Chief Justice of Ontario and with the concurrence of the Chief Justice of the High Court, sit as a member of the Court of Appeal.

**Section 44**

44.—(1) The Chief Justice of Ontario may assign any Justice of appeal not sitting in the Court of Appeal to perform, in Toronto, the work of a judge of the High Court.

(2) Whenever occasion requires, a judge who is not a member of the Court of Appeal may sit in the place of a judge of the Court of Appeal.

(4) A judge who sits in the place of a judge of the Court of Appeal shall be conclusively deemed to have been entitled and qualified to so sit within the meaning of subsections 2 and 3.

**Section 45**

45. Except as provided in section 44, neither the Chief Justice of Ontario nor any of the Justices of appeal shall, without his consent, be assigned to or required to perform any duty except as such appertains to him as a member of the Court of Appeal. R.S.O. 1960, c. 197, s. 42.

**Section 15**

15. Upon the request of the judge or judges for or with whom he is requested to sit or act, or upon the request of the Chief Justice of Ontario or of the Chief Justice of the High Court, any judge of the Supreme Court may sit and act as a judge of either of the branches of the Supreme Court, or perform any other official or ministerial act for or on behalf of any judge absent from illness or any other cause, or in the place of any judge whose office has become vacant, or as an additional judge of the Court of Appeal, and while so sitting and acting, any such judge has all the power and authority of a judge of the Supreme Court. R.S.O. 1960, c. 197, s. 13; 1972, c. 159, s. 5.

## Section 18

## Section 17

change

NOTES

## Section 18

(1) The Divisional Court has jurisdiction to hear, determine and dispose of,

- (a) all appeals to the Supreme Court under any act other than this Act, the *Divorce Act (Canada)*, *The County Courts Act* and *The Unified Family Court Act*, 1976;
- (b) applications for judicial review under *The Judicial Review Procedure Act*, 1971;
- (c) all appeals from interlocutory judgments of a judge of the High Court, except from an order for interim relief in respect of any claim made in a divorce proceeding, with leave as provided by the rules;
- (d) all applications by way of stated case, whether as an appeal or otherwise, to the Supreme Court under any act other than *The Summary Convictions Act*;
- (e) all appeals from final judgments of a master, local judge, local master or other officer of the Supreme Court, except those made by a local judge in respect of any claim made in a divorce proceeding; and
- (f) any other appeal or application where so provided for by an Act or in the rules.

(2) Where by virtue of subsection (1) (a), an appeal is to the Divisional Court, and the right to appeal is only with leave, such leave shall be obtained from the Divisional Court, notwithstanding the provisions of any other statute.

(3) For the purposes of subsection (1), *Supreme Court* shall include the High Court or a judge thereof, the Court of Appeal or a judge thereof or a judge of the Supreme Court.

## Section 17

17.—(1) The Divisional Court has jurisdiction to hear, determine and dispose of,

- (a) all appeals to the Supreme Court under any Act other than this Act and *The County Courts Act*;
- (b) applications for judicial review under *The Judicial Review Procedure Act*, 1971;
- (c) [Repealed 1977, c. 51, s. 111.]
- (d) all appeals from interlocutory judgments or orders of a judge of the High Court, with leave as provided in the rules;
- (e) all applications by way of stated case, whether as an appeal or otherwise, to the Supreme Court under any Act other than *The Summary Convictions Act*;
- (f) all appeals from final judgments or orders of the master, local judge, local master, or other officer of the Supreme Court, except final judgments or orders made by a local judge under *The Divorce Act (Canada)*, 1971, Vol. 2, c. 57, s. 1; 1972, c. 48, s. 1; 1977, c. 51, s. 111-2,

(2) Where, by or under any Act, other than this Act, *The Unified Family Court Act*, 1976 and *The County Courts Act*, provision is made for an appeal to the High Court or the Court of Appeal, or to a judge thereof, or to a judge of the Supreme Court, or for an application thereto by way of stated case under any Act other than *The Summary Convictions Act*, whether as an appeal or otherwise, such provision shall be deemed for the purposes of subsection 1 to provide that the appeal or application shall be to the Supreme Court. 1971, Vol. 2, c. 57, s. 1; 1976 (2nd Sess.), c. 85, s. 22.

(3) Where an appeal under any Act referred to in subsection 2 can only be brought with leave,

- (a) obtained from the Court of Appeal, such leave shall be obtained from the Divisional Court; or
- (b) obtained in any other manner, such leave shall be obtained from the Divisional Court or a judge thereof as provided in the rules. 1970, c. 97, s. 3; 1971, Vol. 2, c. 57, s. 1.

NOTES

<b>Section 19(1)</b>	<b>Section 48(1)</b>	<b>change</b>
(2)	(1), (2)	change
(3)	(3)	change
<b>Section 20(1)</b>	<b>Section 48(1a)</b>	<b>change</b>
(2)	-	new

**Section 19**

(1) Except where otherwise provided, every proceeding in the Divisional Court shall be heard, determined and disposed of by three judges sitting together.

(2) The Divisional Court may sit in one or more panels as the Chief Justice of the High Court directs from time to time. When the Chief Justice of the High Court is not sitting, the senior justice sitting shall preside over the panel on which he is sitting.

(3) At least one panel of the Divisional Court shall sit continuously in Toronto except during July and August and sittings may be held elsewhere in Ontario as directed by the Chief Justice of the High Court.

**Section 20**

(1) A proceeding in the Divisional Court shall be heard, determined and disposed of by one judge of the Divisional Court where the proceeding,

(a) is an appeal under *The Small Claims Court Act*; or

(b) is a matter that the Chief Justice of the High Court or a judge designated by him is satisfied from the nature of the issues involved or the necessity for expedition can and ought to be heard by one judge.

(2) Where a proceeding in the Divisional Court is disposed of by one judge, his judgment is a judgment of the Divisional Court.

**Section 48**

48.—(1) Except where otherwise provided, every proceeding in the Divisional Court shall be heard, determined and disposed of before three judges thereof sitting together of whom one shall be the Chief Justice of the High Court or a judge of the High Court designated by him, and the sitting shall be presided over by the Chief Justice of the High Court or his designate.

(2) A proceeding in the Divisional Court may be heard, determined and disposed of by a judge of the Divisional Court sitting singly where the proceeding,

(a) is an appeal under clause f of subsection 1 of section 17; or  
 (b) is in a matter that the Chief Justice of the High Court or a judge designated by him is satisfied, from the nature of the issues involved and the necessity for expedition, can and ought to be heard by a judge sitting singly.

(2) The Divisional Court may sit in two or more sections as the Chief Justice of the High Court directs from time to time.

(3) In accordance with the rules, sittings of the Divisional Court shall be held in Toronto continuously, except during vacations and holidays, and shall be held in London, Ottawa, Sudbury, Sault Ste. Marie and Thunder Bay at such times as the Chief Justice of the High Court may fix for the expeditious dispatch of the matters set down for hearings at those places.

## NOTES

Section 21(1)	-	new
(2)	Section 6(2) & Section 15	change
Section 22(1)	Sections 34 & 42a	change
(2), (3)	-	new

**Section 21**

(1) The Chief Justice of the High Court may assign any judge of the High Court assigned to the Divisional Court, not needed for the time being in the Divisional Court, to perform any other work of a judge of the High Court.

(2) Where a judge assigned to the Divisional Court is for any reason unable to act, a judge who has not been assigned to the Divisional Court may sit in place of that judge.

**MATTERS INCIDENTAL TO APPEAL****Section 22**

(1) A justice of the Court of Appeal or a judge of the Divisional Court may make an order or give directions incidental to an appeal or other proceeding in the court of which he is a judge, or make an interim order to prevent prejudice to the claims of any of the parties pending the appeal or proceeding; providing, however, that such direction or order does not involve the decision of the appeal or proceeding.

(2) A justice of the Court of Appeal or a judge of the Divisional Court may exercise the power and authority of the court of which he is a member to:

- (a) direct the entry of any judgment or make any order on consent; or
- (b) dismiss an appeal or other proceeding for want of prosecution.

(3) Subject to Section 26, every such judgment or order is subject to appeal to the Court of Appeal or the Divisional Court, as the case may be, with leave.

**SECTION 6**

(2) Every judge of the High Court is also a judge of the Divisional Court. 1970, c. 97, s. 2.

**Section 15**

(5) Upon the request of the judge or judges for or with whom he is requested to sit or act, or upon the request of the Chief Justice of Ontario or of the Chief Justice of the High Court, any judge of the Supreme Court may sit and act as a judge of either of the branches of the Supreme Court, or perform any other official or ministerial act for or on behalf of any judge absent from illness or any other cause, or in the place of any judge whose office has become vacant, or as an additional judge of the Court of Appeal, and while so sitting and acting, any such judge has all the power and authority of a judge of the Supreme Court. R.S.O. 1960, c. 197, s. 13; 1972, c. 159, s. 5.

**Section 34**

34. In any cause or matter pending before the Court of Appeal, any direction incidental to it not involving the decision of the appeal may be given by a judge of that court, and a judge of that court may, during vacation, make any interim order that he thinks fit to prevent prejudice to the claim of any of the parties pending an appeal, but every such order is subject to appeal to the Court of Appeal. R.S.O. 1960, c. 197, s. 31.

**Section 42a**

42a. In any cause or matter pending before the Divisional Court, any direction incidental to it not involving the decision of the appeal may be given by a judge of that court, and a judge of that court may, during vacation, make any interim order that he thinks fit to prevent prejudice to the claim of any of the parties pending an appeal, but every such order is subject to appeal to the Divisional Court. 1976, c. 16, s. 3.

<b>Section 23</b>	-	new
<b>Section 24(1)</b>	-	new
(2), (3)	Section 30(1), (2)	no change
(4)	(3)	change in form

NOTES**APPEAL TAKEN TO WRONG COURT****Section 23**

Where an appeal is taken to the wrong court, it may be adjourned to the proper court.

**APPEALS****Section 24**

(1) The court, upon an appeal, has and may exercise such original jurisdiction as may be necessary or incidental to the hearing or determination of the appeal.

(2) The court, upon an appeal, may give any judgment that ought to have been pronounced and may make such further or other order as may seem just.

(3) The court, upon an appeal, has power to draw inferences of fact not inconsistent with any finding of the jury that is not set aside, and if satisfied that there are before it all the materials necessary for finally determining the matters in controversy, or any of them, or for awarding any relief sought, it may give judgment accordingly, but if it is of the opinion that there are not sufficient materials before it to enable it to give judgment, it may direct the appeal to stand over for further consideration and may direct that such issues or questions of fact be tried and determined and such accounts be taken and such inquiries be made as are considered necessary to enable it on such further consideration finally to dispose of the matters in controversy.

(4) The powers conferred by subsections (1), (2) and (3) may be exercised notwithstanding that the appeal is as to part only of the judgment, and may be exercised in favour of all or any of the parties, although they may not have appealed.

**Section 30**

30.—(1) The court upon an appeal may give any judgment that ought to have been pronounced and may make such further or other order as is considered just.

(2) The court has power to draw inferences of fact not inconsistent with any finding of the jury that is not set aside, and if satisfied that there are before it all the materials necessary for finally determining the matters in controversy, or any of them, or for awarding any relief sought, it may give judgment accordingly, but if it is of opinion that there are not sufficient materials before it to enable it to give judgment, it may direct the appeal to stand over for further consideration and may direct that such issues or questions of fact be tried and determined and such accounts be taken and such inquiries be made as are considered necessary to enable it on such further consideration finally to dispose of the matters in controversy.

(3) The powers conferred by subsections 1 and 2 may be exercised notwithstanding that the appeal is as to part only of the judgment, order or decision, and may be exercised in favour of all or any of the parties, although they may not have appealed. R.S.O. 1960, c. 197, s. 27.

NOTES

(5)	Rule 234	change in form
(6)	Sections 44(6) & 48(4)	change in form
Section 25(1), (2)	Section 31(1), (2)	no change
(3)	Section 32	no change

**SECTION 24 CONTINUED**

(5) On all appeals, or hearings in the nature of appeals, and on all motions for a new trial, the court or judge appealed to has all the powers as to amendment and otherwise of the court, judge or officer appealed from, and full discretionary power to receive further evidence, either by affidavit or oral examination, as may be directed.

(6) No judge shall sit on the hearing of an appeal from his own decision.

**Section 25**

(1) A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question that the judge at the trial was not asked to leave to the jury, or by reason of any omission or irregularity in the course of the trial, unless some substantial wrong or miscarriage has been thereby occasioned.

(2) If it appears that a substantial wrong or miscarriage was so occasioned, but it affected part only of the matter in controversy or some or one only of the parties, the court may give final judgment as to any part or any party not so affected, and direct a new trial as to the other part only, or only as to the other parties.

(3) A new trial may be ordered upon any question without interfering with the decision upon any other question.

**Rule 234****Rule 234**

234.—(1) On all appeals, or hearings in the nature of appeals, and on all motions for a new trial, the court or judge appealed to has all the powers as to amendment and otherwise of the court, judge or officer appealed from, and full discretionary power to receive further evidence, either by affidavit, oral examination before the court or judge appealed to, or as may be directed.

(2) (Revised, O. Reg. 106/75, s. 23.)

(3) (Revised, O. Reg. 106/75, s. 23.)

**SECTION 44**

(6) A Judge shall not sit on the hearing of an appeal from a judgment or order made by himself. R.S.O. 1960, c. 197, s. 41.

**SECTION 48**

(4) A Judge of the Divisional Court shall not sit as a member of the Divisional Court considering an appeal from his own decision. 1970, c. 97, s. 6.

**Section 31**

31.—(1) A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question that the judge at the trial was not asked to leave to the jury, or by reason of any omission or irregularity in the course of the trial, unless some substantial wrong or miscarriage has been thereby occasioned.

(2) If it appears that a substantial wrong or miscarriage was so occasioned but it affected part only of the matter in controversy or some or one only of the parties, the court may give final judgment as to any part or any party not so affected, and direct a new trial as to the other part only, or only as to the other parties. R.S.O. 1960, c. 197, s. 28.

**Section 32**

32. A new trial may be ordered upon any question without interfering with the decision upon any other question. R.S.O. 1960, c. 197, s. 29.

NOTES

## Section 26(1)

(2)

## Section 27

-

new

change

**RESTRICTIONS ON APPEALS****Section 26**

(1) No appeal shall lie from:

- (a) an order allowing an extension of time for appealing from a judgment or order;
- (b) an order of a judge giving unconditional leave to defend an action; or
- (c) the decision of any court or of any judge thereof where it is provided by any Act that there is no right of appeal therefrom.

(2) No appeal shall lie without leave of the court to which the appeal is taken or a judge thereof,

- (a) from an order made with the consent of the parties; or
- (b) where the appeal is only as to costs.

**Section 27**

27. No order of the High Court or of a judge thereof made with the consent of the parties is subject to appeal, and no order of the High Court or of a judge thereof as to costs only that by law are left to the discretion of the court is subject to appeal on the ground that the discretion was wrongly exercised or that it was exercised under a misapprehension as to the facts or the law or on any other ground, except by leave of the court or judge making the order. R.S.O. 1960, c. 197, s. 24.

NOTES

Section 27	Section 47(1)	change
Section 28(1)	Section 47(2)	change
(2)	Section 35(1)	change
(3)	(2)	no change

**HIGH COURT****Section 27**

Every proceeding in the High Court, except as otherwise provided in this Act or by the rules, shall be heard and disposed of by a judge.

**Section 28**

(1) A judge shall decide all questions coming properly before him, and shall not reserve any case, or any point in a case, for the consideration of the Court of Appeal, except as provided in subsection (2) and (3).

(2) If a judge considers a decision previously given to be wrong and the question of law involved to be of sufficient importance to be considered in an appellate court, he may refer the case before him to the Court of Appeal after making any necessary findings of fact.

(3) Where a case is so referred, it shall be set down for hearing, and notice of hearing shall be given in like manner as in the case of an appeal to the Court of Appeal.

**Section 47**

47.—(1) Every action and proceeding in the High Court and all business arising out of it, except as herein otherwise expressly provided, shall be heard, determined and disposed of before a judge, and where he sits in court, he constitutes the court.

(2) Subject to section 35, a judge of the High Court shall decide all questions coming properly before him, and shall not reserve any case, or any point in a case, for the consideration of the Court of Appeal.

**Section 35**

35.—(1) If a judge considers a decision previously given to be wrong and of sufficient importance to be considered in a higher court, he may refer the case before him to the Court of Appeal.

(2) Where a case is so referred, it shall be set down for hearing, and notice of hearing shall be given in like manner as in the case of an appeal to the Court of Appeal. R.S.O. 1960, c. 197, s. 32.

NOTES

Section 29(1), (2)	Section 50(1), (2)
(3)	(3)
(4)	(4)
(5)	(5)
(6)	(6)
(7)	Section 47(3)

change in form  
change  
change in form  
no change  
change  
change

**TRIAL Sittings****Section 29**

(1) There shall be as many sittings of the High Court in and for every county as are required for the trial of civil proceedings and for the trial of criminal matters.

(2) Separate sittings may be held for the trial of civil proceedings that are to be tried without a jury, and separate sittings for those that are to be tried with a jury, and separate sittings may also be held for the trial of criminal matters.

(3) Sittings may be held concurrently or separately as directed by the Chief Justice of the High Court or by the judge presiding at the sittings.

(4) Subject to the rules, where a sittings is held for the trial of civil proceedings that are to be tried with and for those that are to be tried without a jury, separate lists shall be made and the jury cases shall be first disposed of unless the presiding judge otherwise directs.

(5) The sittings shall be held in the court house of the county or at such other place in the county as the presiding judge directs.

(6) Subject to the directions of the Chief Justice of the High Court, at least two sittings shall be held each year in and for every county, when necessary, for the due dispatch of business.

(7) All such arrangements as may be necessary or proper for the holding of any sittings of the courts shall be made by the judges of the High Court, with power in the Chief Justice of the High Court to make such re-adjustment or re-assignment as is necessary from time to time.

**Section 50**

60.—(1) There shall be as many sittings of the High Court in and for every county as are required for the trial of civil causes, matters and issues and for the trial of criminal matters and proceedings.

(2) Separate sittings may be held for the trial of civil causes, matters and issues that are to be tried without a jury, and separate sittings for those that are to be tried with a jury, and separate sittings may also be held for the trial of criminal matters and proceedings.

(3) Sittings may be held concurrently or separately as directed by the judges appointing the days therefor or by the judges presiding at the sittings.

(4) Subject to the rules, where a sittings is held for the trial of civil causes, matters and issues that are to be tried with and for those that are to be tried without a jury, separate lists shall be made and the jury cases shall be first disposed of unless the presiding judge otherwise directs. R.S.O. 1960, c. 197, s. 46(1-4).

(5) The sittings shall be held in the court house of the county or at such other place in the county as the presiding judge directs. R.S.O. 1960, c. 197, s. 46(5); 1961-62, c. 65, s. 24.

(6) Subject to the rules, at least two sittings shall be held in each year in and for every county, and additional sittings shall be provided when necessary for the due dispatch of business. R.S.O. 1960, c. 197, s. 46(6).

**SECTION 47**

(3) All such arrangements as may be necessary or proper for the holding of any of the courts, or the transaction of business in the High Court, or the arrangement from time to time of judges to hold such courts, or to transact such business, shall be made by the judges of that branch, with power in the Chief Justice of the High Court to make such readjustment or re-assignment as is necessary from time to time. It.S.O. 1960, c. 197, s. 44.

NOTES

Section 30	Section 52	change
Section 31(1)	Section 53(1)	change
(2)	(2)	no change
Section 32	Section 49(1)	change

**Section 30**

Where the judge whose duty it is to hold a sittings does not arrive in time or is not able to open court on the day appointed for that purpose, the sheriff may, after 4 o'clock in the afternoon of that day, by proclamation, adjourn the sittings to an hour on the following day to be named by him, and so from day to day until the judge arrives or until other directions are received from the judge or from the Chief Justice of the High Court.

**Section 31**

(1) No sittings shall begin on any day before 9 o'clock in the forenoon; nor, except for special reasons, shall it extend beyond 7 o'clock in the afternoon, and there shall be an intermission of at least one hour at or near noon.

(2) Failure to observe any of the provisions of subsection (1) does not render the trial or other proceeding void.

**MOTIONS COURT****Section 32**

At least one judge of the High Court shall sit at Toronto daily, Monday through Friday, in each week for the hearing of motions and applications and, except during July and August, a judge of the High Court shall sit at Ottawa and London at least one day in each alternate week for the hearing of motions and applications.

**Section 52**

52. Where the judge whose duty it is to hold a sittings does not arrive in time or is not able to open court on the day appointed for that purpose, the sheriff may, after 6 o'clock in the afternoon of that day, by proclamation, adjourn the sittings to an hour on the following day to be named by him, and so from day to day until the judge arrives or until other directions from the judge or from the Chief Justice of the High Court are received. R.S.O. 1960, c. 197, s. 48.

**Section 53**

53.—(1) No sittings shall begin on any day before 9 o'clock in the forenoon, nor, except for special reasons, shall it extend beyond 7 o'clock in the afternoon, and there shall be an intermission of at least half an hour at or near noon.

(2) Failure to observe any of the provisions of subsection 1 does not render the trial or other proceeding void. R.S.O. 1960, c. 197, s. 49.

**Section 49**

49.—(1) Sittings of the High Court shall be held in accordance with the rules of court of Ottawa and London on at least one day in each alternate week, except during vacation.

NOTES

Section 33(1), (2), (3)	Section 115(1), (2), (3)	no change
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**COUNCIL OF JUDGES****Section 33**

(1) A council of the judges of the Supreme Court, of which due notice shall be given to all of them, shall assemble at least once in every year on such day as may be fixed by the Chief Justice of Ontario for the purpose of considering the operation of this Act and of the rules and the working of the offices and the arrangements relative to the duties of the officers of the court, and of inquiring and examining into any defects that appear to exist in the system of procedure or the administration of justice in the Supreme Court or in any other court or by any other authority.

(2) The council shall report to the Attorney General what amendments or alterations, if any, it would be expedient to make in this Act or otherwise relating to the administration of justice, and what other provision, if any, it would be expedient to make for the better administration of justice.

(3) An extraordinary council for the purposes mentioned in subsection (1) may also be convened at any time by the Lieutenant Governor in Council.

**Section 115**

115.—(1) A council of the judges of the Supreme Court, of which due notice shall be given to all of them, shall assemble at least once in every year on such day as may be fixed by the Chief Justice of Ontario for the purpose of considering the operation of this Act and of the rules and the working of the offices and the arrangements relative to the duties of the officers of the court, and of enquiring and examining into any defects that appear to exist in the system of procedure or the administration of justice in the Supreme Court or in any other court or by any other authority. R.S.O. 1960, c. I97, s. 112(1); 1968-69, c. 54, s. 1.

(2) The council shall report to the Attorney General what amendments or alterations, if any, it would be expedient to make in this Act or otherwise relating to the administration of justice, and what other provision, if any, it would be expedient to make for the better administration of justice. R.S.O. 1960, c. I97, s. 112(2); 1977, c. 51, s. 10.

(3) An extraordinary council for the purposes mentioned in subsection 1 may also be convened at any time by the Lieutenant Governor in Council. R.S.O. 1960, c. I97, s. 112(3).

NOTES

Section 34(1), (2)	Section 116(1), (2)	no change
Section 35	Section 117	no change
Section 36	-	new

**DELEGATION OF POWERS OF JUDGES****Section 34**

(1) Where by this or any other Act, any power or authority is conferred upon the judges of the Supreme Court or upon the judges of the High Court as a body, they may respectively delegate such power or authority to a committee of themselves, and when it is exercised by the committee, the acts done by the committee have the same effect as if they had been done by the body by which the committee was appointed.

(2) The presence of a majority of the members of the committee is necessary to constitute a quorum for the transaction of business.

**QUORUM OF MEETINGS OF JUDGES****Section 35**

Where by this or any other Act any power is conferred on the judges of the Supreme Court or of the High Court, the power may be exercised at a meeting duly called at which, in the case of the Supreme Court, at least seven of the judges are present and, in the case of the High Court, at least five of the judges are present.

**ATTENDANCE AT CONFERENCE****Section 36**

The Chief Justice of Ontario or the Chief Justice of the High Court may require a judge of the Supreme Court to attend a meeting, conference, or seminar relating to the administration of justice.

**DELEGATION OF POWERS OF JUDGES****Section 116**

116.—(1) Where by this or any other Act any power or authority is conferred upon the judges of the Supreme Court or upon the judges of the High Court as a body, they may respectively delegate such power or authority to a committee of themselves, and when it is exercised by the committee, the acts done by the committee have the same effect as if they had been done by the body by which the committee was appointed.

(2) The presence of a majority of the members of the committee is necessary to constitute a quorum for the transaction of business. R.S.O. 1960, c. 197, s. 113.

**Section 117**

117. Where by this Act any power is conferred on the judges of the Supreme Court or of the High Court, the power may be exercised at a meeting duly called at which, in the case of the Supreme Court, at least seven of the judges are present and, in the case of the High Court, at least five of the judges are present. R.S.O. 1960, c. 197, s. 114.

NOTES

<b>Section 37(1)</b>	<b>Rule 401a</b>	<b>change</b>
(2)	<b>Section 11(1) &amp; Rule 401b</b>	<b>change</b>
(3)	(2) & Sec. 44(5)	<b>change</b>

**DELAYED DECISIONS****Section 37**

(1) Where a judge of the Supreme Court or a county court, a master, local judge or local master has heard a proceeding and dies without delivering judgment, any party may, upon notice to all other parties, apply for an order directing a re-hearing as provided in subsection (9).

(2) Where a judge, master, local judge or local master resigns his office or is appointed to any other court or ceases to hold office by reason of his having reached the age of retirement, he may at any time within three months after such event, give judgment in any proceeding previously tried or heard before him, as if he had not so resigned, been appointed or ceased to hold office.

(3) Where a judge has heard a proceeding jointly with other judges in the Court of Appeal or the Divisional Court, he may at any time within the period mentioned in subsection (2) take part in the giving of judgment by that court as if he were still a member of it.

**Rule 401**

401. When a judge who has reserved judgment in any cause, action, issue, motion or matter,  
 (a) dies without giving judgment; or  
 (b) having resigned his office or having been appointed to any other court does not give judgment within the time allowed by statute; or

the Chief Justice of the High Court may order that the cause, action, issue, motion or matter be restored to the proper list for trial or hearing, and, in case the original trial or hearing was upon evidence given viva voce, may direct that the re-trial or re-hearing shall be upon a transcript of the reporter's notes of such evidence, or upon such transcript and additional evidence given viva voce or by affidavit, or upon such transcript and evidence given viva voce and evidence given by affidavit, or upon new evidence, or otherwise as in his opinion the circumstances of the particular case may require, and may dispose of the costs of the original trial or hearing and of the costs of procuring and furnishing any copies of the transcript of the reporter's notes, or may refer the question as to such costs or any of them to the judge presiding at the re-trial or re-hearing, but no directions for a re-trial or re-hearing which include a direction for the use of the transcript of the reporter's notes shall be deemed to limit or restrict the power of the judge presiding at such re-trial or re-hearing in his discretion to permit the recalling of any witness called at the original trial or hearing, or to receive other or additional evidence. [Amended, O. Reg. 520/71, s. 6.]

**Section 11**

11.—(1) Where a judge resigns his office or is appointed to any other court or ceases to hold office by reason of his having reached the age of retirement, he may at any time within eight weeks after such event, give judgment in any cause, action or matter previously tried or heard before him, as if he had not so resigned, been appointed, elected or ceased to hold office. (1965, c. 51, s. 2; 1972, c. 159, s. 4; 1979, c. 65, s. 3.)

(2) Where he has heard a cause, action or matter jointly with other judges in the Court of Appeal or Divisional Court, he may at any time within the period mentioned in subsection 1 take part in the giving of judgment by that court as if he were still a member of it.

**SECTION 44**

(5) A judge who has sat in the Court of Appeal on the hearing of any appeal, matter or proceeding therein may give judgment notwithstanding that he has ceased to be a judge of that court.

## NOTES

(4)	(4)
(5)	(3)
(6)	Rule 401c

change in form
change
change

## SECTION 37 CONTINUED

(4) Where a judge who has heard a proceeding in the Court of Appeal or the Divisional Court is not present when the judgment of the court is delivered, his written judgment may be read by one of the other judges and has the same effect as if he were present.

(5) Where a judge who has heard a proceeding in the Court of Appeal or the Divisional Court is for any reason unable to take part in the giving of judgment, the remaining judges of the court or, if there is a difference of opinion, a majority of them, may give judgment as if such judge were present and taking part in the judgment.

(6) Where a judge of the Supreme Court fails to deliver judgment within six months from the time the trial or hearing was completed, the Chief Justice of Ontario or the Chief Justice of the High Court, as the case may be, may extend the time for the delivery of such judgment and may, if he thinks it necessary, relieve such judge of his duties until his judgment is delivered. Where the time for delivery of the judgment has been extended and the judge fails to deliver judgment within that time or, if no extension has been granted, the Chief Justice of Ontario or the Chief Justice of the High Court, as the case may be, shall report such failure and the surrounding circumstances to the Canadian Judicial Council and any party to the proceeding may, upon notice to all other parties, apply for an order directing a re-hearing as provided in subsection (9).

## SECTION 11

(4) Where a judge who has heard a cause, action or matter in the Court of Appeal or Divisional Court is not present when the judgment of the court is delivered, his written judgment may be read by one of the other judges and has the same effect as if he were present. R.S.O. 1960, c. D-1, s. 9(2-4); 1976, c. C-6, s. 2(1-3).

(3) Where he does not take part in the giving of judgment or where a judge by whom a cause, action or matter has been heard in the Court of Appeal or Divisional Court is absent from illness or any other cause or dies, the remaining judges of the court, or, if there is a difference of opinion, a majority of them, may give judgment as if the judge who has so resigned or been appointed or is dead were still a member of the court and taking part in the judgment, and, in the case of absence, as if the absent judge were present and taking part in the judgment.

## Rule 401

401. When a judge who has reserved judgment in any cause, action, issue, motion or matter,

(c) has not given judgment within six months from the time of reserving it,

the Chief Justice of the High Court may order that the cause, action, issue, motion or matter be restored to the proper list for trial or hearing, and, in case the original trial or hearing was upon evidence given viva voce, may direct that the re-trial or re-hearing shall be upon a transcript of the reporter's notes of such evidence, or upon such transcript and additional evidence given viva voce or by affidavit, or upon such transcript and evidence given viva voce and evidence given by affidavit, or upon new evidence, or otherwise as in his opinion the circumstances of the particular case may require, and may dispose of the costs of the original trial or hearing and of the costs of procuring and furnishing any copies of the transcript of the reporter's notes, or may refer the question as to such costs or any of them to the judge presiding at the re-trial or re-hearing, but no directions for a re-trial or re-hearing which include a direction for the use of the transcript of the reporter's notes shall be deemed to limit or restrict the power of the judge presiding at such re-trial or re-hearing in his discretion to permit the recalling of any witness called at the original trial or hearing, or to receive other or additional evidence. [Amended, O. Reg. 520/71, s. 6.]

NOTES

(7), (8)

new

## SECTION 37 CONTINUED

(7) Where a county court judge, whether sitting as a county court judge or as a local judge of the High Court, fails to deliver judgment within six months from the time the trial or hearing was completed or, if sitting as a local master fails to deliver his judgment on a motion or application, or his report on a reference within three months from the time the hearing thereon was completed, the Chief Judge of the County and District Courts of Ontario may extend the time for the delivery of such judgment or report and, if he thinks it necessary, may relieve such judge of his duties until his judgment or report is delivered. Where the time for delivery of the judgment or report has been extended and the judge fails to deliver his judgment or report within that time or, if no extension has been granted, the Chief Judge of the County and District Courts of Ontario shall report such failure and the surrounding circumstances to the Canadian Judicial Council and any party to the proceeding may, upon notice to all other parties, apply for an order directing a re-hearing as provided in subsection (9).

(8) Where a master, or local master who is not a county court judge, has heard a motion, application or reference and fails to deliver his judgment or report within three months from the time the hearing was completed, the Senior Master may extend the time for the delivery of such judgment or report and if he thinks it necessary, relieve such master or local master of his duties until his judgment or report is delivered. Where the time for delivery of the judgment has been extended and the master or local master has failed to deliver judgment within that time or, if no extension has been granted, the Senior Master shall report such failure and the surrounding circumstances to the Judicial Council for Provincial Judges and any party to the proceeding may, upon notice to all other parties, apply for an order directing a re-hearing as provided in subsection (9).

NOTES

## SECTION 37 CONTINUED

(9) An application for an order directing a re-hearing shall be made to the Chief Justice of Ontario, the Chief Justice of the High Court, the Chief Judge of the County and District Courts of Ontario or the Senior Master, as the case may be, and he may,

- (a) order that the proceeding be restored to the proper list for trial or hearing and, where the original trial or hearing was upon oral evidence, direct that the re-trial or re-hearing shall be upon the transcript of such evidence, or upon such transcript and additional evidence given orally or by affidavit or otherwise as in his opinion the circumstances of the particular case may require;
- (b) dispose of the costs of the original trial or hearing and the costs of obtaining transcripts of evidence, or may refer the question as to such costs to the judge or officer presiding at the re-trial or re-hearing. No order for a re-trial or re-hearing which includes a direction for the use of transcripts of evidence taken at the original trial or hearing shall be deemed to limit or restrict the power of the judge or officer presiding at such re-trial or re-hearing in his discretion to permit the recalling of any witness called at the original trial or hearing, or to receive other or additional evidence.

## Rule 401

401. When a judge who has reserved judgment in any cause, action, issue, motion or matter,  
(a) dies without giving judgment; or  
(b) having resigned his office or having been appointed to any other court does not give judgment within the time allowed by statute; or  
(c) has not given judgment within six months from the time of reserving it,

the Chief Justice of the High Court may order that the cause, action, issue, motion or matter be restored to the proper list for trial or hearing, and, in case the original trial or hearing was upon evidence given viva voce, may direct that the re-trial or re-hearing shall be upon a transcript of the reporter's notes of such evidence, or upon such transcript and additional evidence given viva voce or by affidavit, or upon such transcript and evidence given viva voce and evidence given by affidavit, or upon new evidence, or otherwise as in his opinion the circumstances of the particular case may require, and may dispose of the costs of the original trial or hearing and of the costs of procuring and furnishing any copies of the transcript of the reporter's notes, or may refer the question as to such costs or any of them to the judge presiding at the re-trial or re-hearing, but no directions for a re-trial or re-hearing which include a direction for the use of the transcript of the reporter's notes shall be deemed to limit or restrict the power of the judge presiding at such re-trial or re-hearing in his discretion to permit the recalling of any witness called at the original trial or hearing, or to receive other or additional evidence. [Amended, O. Reg. 520/71, s. 6.]

## RULES OF CIVIL PROCEDURE

### NOTES

#### Section 38

The rules attached hereto as Schedule "A" are hereby ratified, confirmed and declared to be the Rules of Civil Procedure and shall have the force of law upon and after the coming into force of this Act until varied in accordance with the provisions of this Act.

#### RULES COMMITTEE

#### Section 39

- (1) The Rules Committee shall be composed of:
  - (a) the Chief Justice of Ontario, the Chief Justice of the High Court, the Associate Chief Justice of Ontario, the Associate Chief Justice of the High Court and four other judges of the Supreme Court to be appointed by the Chief Justice of Ontario;
  - (b) the Chief Judge of the County and District Courts;
  - (c) two county or district court judges to be appointed by the Chief Judge of the County and District Courts;
  - (d) the Registrar of the Supreme Court;
  - (e) the Attorney General or such law officer of the Crown as he may from time to time appoint;
  - (f) the Senior Master;
  - (g) four barristers or solicitors to be appointed by the Benches of the Law Society of Upper Canada in convocation; and
  - (h) four other barristers or solicitors to be appointed by the Chief Justice of Ontario.

#### Section 114

- 114.—(1) The Rules Committee shall continue to be composed of,
  - (a) the Chief Justice of Ontario, the Chief Justice of the High Court, the Associate Chief Justice of Ontario, the Associate Chief Justice of the High Court and four other judges of the Supreme Court to be appointed by the Chief Justice of Ontario.
  - (b) the Chief Judge of the County and District Courts;
  - (c) two county or district court judges who shall be appointed by the Attorney General;
  - (d) the Minister of the Attorney General or such law officer of the Crown as he may from time to time appoint;
  - (e) the Senior Master;
  - (f) the Registrar of the Supreme Court.
  - (f) three barristers or solicitors who shall be appointed by the Benches of the Law Society of Upper Canada in convocation; and
  - (g) such other barristers or solicitors, not exceeding three at any one time, as may be appointed by the Chief Justice of Ontario, R.B.O. 1960, c. 197, s. 114(1); 1961-62, c. 65, s. 3; 1965, c. 51, s. 5(1); 1975, c. 30, s. 6(1); 1979, c. 65, s. 6(1-2).

NOTES

(2), (3)	(2), (2a)	no change
(4), (5)	(4), (5)	no change
(6)	(6)	change
(7)	(7)	no change
(8)	(8), (9)	change

## SECTION 39 CONTINUED

(2) The Chief Justice of Ontario is the chairman of the Rules Committee; but, in his absence or at his request, the Chief Justice of the High Court shall preside.

(3) The Chief Justice of Ontario and the Chief Justice of the High Court may jointly appoint either the Associate Chief Justice of Ontario or the Associate Chief Justice of the High Court to act as chairman from time to time as set out in the appointment.

(4) Each of the members of the Rules Committee appointed under clause (a), (c), or (g) of subsection (1) shall hold office for a period of three years and is eligible for re-appointment.

(5) Each of the members of the Rules Committee appointed under clause (h) of subsection (1) shall hold office for a period of one year and is eligible for re-appointment.

(6) In case of the resignation, death or inability to act of any member appointed under clause (a), (c), (g) or (h) of subsection (1), the Chief Justice of Ontario, the Chief Judge of the County and District Courts or Benchers of the Law Society of Upper Canada, as the case may be, may appoint another person similarly qualified to hold office for the unexpired portion of the term of the member who has resigned or died or is unable to act.

(7) A majority of the members of the Rules Committee constitutes a quorum.

(8) The Rules Committee shall hold at least two meetings each year at such time and place as the Chairman may direct.

## SECTION 314

(2) The Chief Justice of Ontario is the chairman of the Rules Committee, but, in his absence or at his request, the Chief Justice of the High Court shall preside.

(2a) The Chief Justice of Ontario and the Chief Justice of the High Court may jointly appoint either the Associate Chief Justice of Ontario or the Associate Chief Justice of the High Court to act as chairman from time to time as set out in the appointment. 1979, c. 65, s. 6(3).

(4) Each of the members of the Rules Committee appointed under clause a, c or f or subsection 1 shall hold office for a period of three years and is eligible for a reappointment. R.S.O. 1960, c. 197, s. 111(2-4).

(5) Each of the members of the Rules Committee appointed under clause g of subsection 1 shall hold office for a period of one year and is eligible for reappointment. 1965, c. 51, s. 5(2).

(6) In case of the resignation, death or inability to act of any member appointed under clause a, c, f or g of subsection 1, the Chief Justice of Ontario, Minister of the Attorney General or Benchers of the Law Society of Upper Canada, as the case may be, may appoint another member similarly qualified to hold office for the unexpired portion of the term of the member who has resigned or died or is unable to act. R.S.O. 1960, c. 197, s. 111(5); 1965, c. 51, s. 5(3).

(7) A majority of the members of the Rules Committee constitutes a quorum.

(8) The Rules Committee shall hold an annual meeting on the first Monday following Christmas Day that is not a holiday at the City of Toronto or at such other time and place as the chairman may direct.

(9) The chairman may at any time and upon the written request of any three members shall direct the secretary to call a meeting of the Rules Committee at such time and place as he may determine. R.S.O. 1960, c. 197, s. 111(6-8).

## NOTES

## Section 40

(1) Unless otherwise provided by any statute of the Parliament of Canada and subject to the approval of the Lieutenant Governor in Council, the Rules Committee may, at any time, make rules governing all matters relating to practice and procedure in the Supreme Court and the county courts of Ontario.

(2) Without limiting the generality of the powers conferred by subsection (1), rules relating to the following matters shall be deemed for the purposes of this section to be rules relating to practice and procedure:

- (a) providing for the joinder of claims and parties and for the representation of parties;
- (b) providing for class actions and the remedies available thereunder;
- (c) providing for the method of commencing proceedings and for the service of process including service out of Ontario;
- (d) providing for the disposition of actions without trial and for the consequences thereof;
- (e) providing for pleadings and for the assertion of claims by way of a counterclaim, cross-claim or third party claim;
- (f) providing for disclosure and discovery before trial and prescribing the scope and the extent thereof;
- (g) providing for the physical and mental examination of parties;

(10) Subject to the approval of the Lieutenant Governor in Council, the Rules Committee may at any time amend or repeal any of the rules and may make any further or additional rules for carrying this Act into effect, and in particular for,

- (a) regulating the sittings of the courts;
- (b) regulating the pleading, practice and procedure in the Supreme Court and in the county and surrogate courts;
- (b-a) prescribing the rate of interest to be used in determining the capitalized value of an award in respect of future damages;
- (c) allowing service out of Ontario;
- (d) prescribing and regulating the proceedings under any statute that confers jurisdiction upon the court or a judge;
- (da) prescribing the time and manner for making an appeal to Divisional Court;
- (e) fixing the vacations;
- (f) empowering the master, or the local judges, or the local masters in respect of actions brought in their counties, to do any such thing, and to transact any such business, and to exercise any such authority and jurisdiction in respect of the same as are or may be done, transacted or exercised by a judge of the Supreme Court in court upon motions for judgment in undefended actions, for the appointment of receivers by way of equitable execution and for ex parte injunctions and upon motions or as are specified in the rules except in respect to matters relating to,

  - (i) the liberty of the subject,
  - (ii) appeals and applications in the nature of appeals,
  - (iii) proceedings under The Mental Incompetency Act,
  - (iv) applications for advice under The Trustee Act,
  - (v) matters affecting the custody of children, other than interlocutory applications for their interim custody or maintenance,
  - (vi) proceedings enabling infants to make binding settlements of their real and personal property on marriage;

- (f-a) prescribing motions that need not be heard in open court;
- (g) regulating generally any matters relating to the practice and procedure of the courts or to the duties of the officers thereof, or to the costs of proceedings therein, and every other matter deemed expedient for better attaining the ends of justice, advancing the remedies of suitors and carrying into effect this Act and all other Acts respecting the courts;

NOTE: The following cl. (h) repealed by 1979, c. 66, s. 6(6) is to come into force on proclamation.

- (h) regulating all fees payable to the Crown in respect of proceedings in any court, R.S.O. 1960, c. 197, s. 11(9); 1968, c. 59, s. 6; 1971, Vol. 2, c. 57, s. 4; 1976, c. 30, s. 6(2); 1977, c. 51, s. 8(1-2); 1979, c. 66, s. 6(6).

(11) Where provisions in respect of practice or procedure are contained in any statute, rules may be made modifying such provisions to any extent that is considered necessary for adapting them to the general practice and usage of the court, unless that power is expressly excluded.

(12) Any provisions relating to the payment, transfer or deposit into, or in, or out of any court of any money or property, or to the dealing therewith, shall, for the purposes of this section, be deemed to be provi-

NOTESCONTINUED

- (h) empowering masters, local judges and local masters to exercise such powers and authority as may be exercised by a judge of the High Court on interlocutory motions and originating applications other than those relating to:
  - (i) the liberty of the subject; or
  - (ii) appeals and applications in the nature of appeals;
  - (iii) prescribing motions and applications which need not be heard in open court;
  - (iv) providing for the preservation of the rights of parties pending litigation;
  - (v) regulating the setting down, preparation for and conduct of trials;
  - (vi) providing for the directing of references and regulating the procedure on references;
  - (vii) regulating the costs of proceedings;
  - (viii) providing for the entry and enforcement of judgments;
  - (ix) prescribing the court to which appeals may be taken, if not inconsistent with this Act or any other Act;
  - (x) prescribing the time for and regulating the procedure on appeals, including appeals to the Court of Appeal and to the Divisional Court;

(10) Subject to the approval of the Lieutenant Governor in Council, the Rules Committee may at any time amend or repeal any of the rules and may make any further or additional rules for carrying this Act into effect, and in particular for,

- (a) regulating the sittings of the courts;
- (b) regulating the pleading, practice and procedure in the Supreme Court and in the county and surrogate courts;
- (ba) prescribing the rate of interest to be used in determining the capitalized value of an award in respect of future damages;
- (c) allowing service out of Ontario;
- (d) prescribing and regulating the proceedings under any statute that confers jurisdiction upon the court or a judge;
- (da) prescribing the time and manner for making an appeal to Divisional Court;
- (e) fixing the vacations;
- (f) empowering the master, or the local judges, or the local masters in respect of actions brought in their counties, to do any such thing, and to transact any such business, and to exercise any such authority and jurisdiction in respect of the same as are or may be done, transacted or exercised by a judge of the Supreme Court in court upon motions for judgment in undefended actions, for the appointment of receivers by way of equitable execution and for ex parte injunctions and upon motions or as are specified in the rules except in respect to matters relating to,

  - (i) the liberty of the subject;
  - (ii) appeals and applications in the nature of appeals;
  - (iii) proceedings under The Mental Incompetency Act;
  - (iv) applications for advice under The Trustee Act;
  - (v) matters affecting the custody of children, other than interlocutory applications for their interim custody or maintenance;
  - (vi) proceedings enabling infants to make binding settlements of their real and personal property on marriage;

- (fa) prescribing motions that need not be heard in open court;
- (g) regulating generally any matters relating to the practice and procedure of the courts or to the duties of the officers thereof, or to the costs of proceedings therein, and every other matter deemed expedient for better attaining the ends of justice, advancing the remedies of suitors and carrying into effect this Act and all other Acts respecting the courts;

NOTE: The following cl. (h) repealed by 1979, c. 65, s. 6(6) is to come into force on proclamation.

- (h) regulating all fees payable to the Crown in respect of proceedings in any court. R.S.O. 1960, c. 197, a. 111(9); 1968, c. 69, a. 6; 1971, Vol. 2, c. 67, a. 4; 1975, c. 30, s. 6(2); 1977, c. 51, s. 8(1-2); 1979, c. 65, s. 6(5-8).

(11) Where provisions in respect of practice or procedure are contained in any statute, rules may be made modifying such provisions to any extent that is considered necessary for adapting them to the general practice and usage of the court, unless that power is expressly excluded.

(12) Any provisions relating to the payment, transfer or deposit into, or in, or out of any court of any money or property, or to the dealing therewith, shall, for the purposes of this section, be deemed to be provi-

NOTESCONTINUED

- (q) regulating the procedure in particular types of proceedings including proceedings under any statute that confers jurisdiction upon the court or a judge;
- (r) providing for the separate representation of a child, for mediation and for the assessment of the child and the parties in any proceeding relating to the custody of or access to a child;
- (s) regulating the offices and officers of the court;
- (t) relating to evidence, provided that they do not contravene the express provisions of any statute;
- (u) relating to the imposition of sanctions for non-compliance with the rules;
- (v) prescribing the discount rate to be used in determining the capitalized value of an award in respect of future damages; and
- (w) providing for arbitration in a proceeding.

(3) Where provisions in respect of practice or procedure are contained in any statute, rules may be made modifying such provisions to any extent that is considered necessary for adapting them to the general practice and procedure of the courts unless that power is expressly excluded.

(4) The power to make rules conferred upon the Rules Committee by this section includes the power to amend or repeal the rules from time to time and to make other rules.

110) Subject to the approval of the Lieutenant Governor in Council, the Rules Committee may at any time amend or repeal any of the rules and may make any further or additional rules for carrying this Act into effect, and in particular for,

- (a) regulating the sittings of the courts;
- (b) regulating the pleading, practice and procedure in the Supreme Court and in the county and surrogate courts;
- (ba) prescribing the rate of interest to be used in determining the capitalized value of an award in respect of future damages;
- (c) allowing service out of Ontario;
- (d) prescribing and regulating the proceedings under any statute that confers jurisdiction upon the court or a judge;
- (da) prescribing the time and manner for making an appeal to Divisional Court;
- (e) fixing the vacations;
- (f) empowering the master, or the local judges, or the local masters in respect of actions brought in their counties, to do any such thing, and to transact any such business, and to exercise any such authority and jurisdiction in respect of the same as are or may be done, transacted or exercised by a judge of the Supreme Court in court upon motions for judgment in undefended actions, for the appointment of receivers by way of equitable execution and for ex parte injunctions and upon motions or as are specified in the rules except in respect to matters relating to,

  - (I) the liberty of the subject,
  - (II) appeals and applications in the nature of appeals,
  - (III) proceedings under The Mental Incompetency Act,
  - (iv) applications for advice under The Trustee Act,
  - (v) matters affecting the custody of children, other than interlocutory applications for their interim custody or maintenance,
  - (vi) proceedings enabling infants to make binding settlements of their real and personal property on marriage;

- (fa) prescribing motions that need not be heard in open court;
- (g) regulating generally any matter relating to the practice and procedure of the courts or to the duties of the officers thereof, or to the costs of proceedings therein, and every other matter deemed expedient for better attaining the ends of justice, advancing the remedies of suitors and carrying into effect this Act and all other Acts respecting the courts;

NOTE: The following cl. (h) repealed by 1979, c. 66, s. 6(6) is to come into force on proclamation.

- (h) regulating all fees payable to the Crown in respect of proceedings in any court, R.S.O. 1960, c. 197, s. 111(9); 1968, c. 69, s. 6; 1971, Vol. 2, c. 57, s. 4; 1976, c. 30, s. 6(2); 1977, c. 51, s. 81(2); 1979, c. 66, s. 6(6).

(11) Where provisions in respect of practice or procedure are contained in any statute, rules may be made modifying such provisions to any extent that is considered necessary for adapting them to the general practice and usage of the court, unless that power is expressly excluded.

(12) Any provisions relating to the payment, transfer or deposit into, or in, or out of any court of any money or property, or to the dealing therewith, shall, for the purposes of this section, be deemed to be provided

NOTES

Section 41	Section 26	change
Section 42(a)	-	new
(b)	Section 25	change
(c)	Section 18(7)	change

**PART II****Section 41**

The provisions of this part apply to all courts in so far as the matters to which they relate are cognizable by such courts.

**ADMINISTRATION OF LAW AND EQUITY****Section 42**

In every civil proceeding, law and equity shall be administered according to the following provisions:

*Law and Equity to be Administered Concurrently*

- (a) The court shall administer concurrently all rules of law and equity.

*Rules of Equity to Prevail*

- (b) In all matters in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail.

*Legal Rights*

- (c) Subject to the provisions of this Act for giving effect to equitable rights and other matters of equity, the court shall give effect to all legal claims and demands and all estates, titles, rights, duties, obligations and liabilities existing by the common law or created by any statute.

**Section 26**

26. Sections 18 to 25 are in force and have effect in all courts so far as the matters to which they relate are cognizable by such courts. R.S.O. 1960, c. 197, s. 23.

**Section 25**

25. In questions relating to the custody and education of infants and generally in all matters in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity prevail. R.S.O. 1960, c. 197, s. 22.

**Section 18**

18. In every civil cause or matter, law and equity shall be administered according to the following rules:

- 7. Subject to the foregoing provisions for giving effect to equitable rights and other matters of equity and the other express provisions of this Act, the court and every judge shall recognize and give effect to all legal claims and demands, and all estates, rights, duties, obligations and liabilities existing by the common law or created by any statute, in the same manner as they would have been recognized and given effect to before the commencement of The Ontario Judicature Act, 1881 by any of the courts then existing and whose jurisdiction is now vested in the Supreme Court.

## NOTES

(d)	(1)	change
(e)	(3)	change
(f)	(5)	change

## SECTION 42 CONTINUED

*Equitable Rights*

- (d) Where a plaintiff claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract, or against any right, title or claim whatsoever asserted by any defendant in the proceeding or to any relief founded upon a legal right which formerly could only have been given by a court of equity, the court shall give to the plaintiff the same relief as ought formerly to have been given by a court of equity in proceedings for the same or like purpose.

*Equitable Defences*

- (e) Where a defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract, or against any right, title or claim asserted by any plaintiff in the proceedings, or alleges any ground of equitable defence to any claim of the plaintiff, the court shall give to every equitable estate, right or ground of relief so claimed, and every equitable defence so alleged, the same effect by way of defence against the claim of the plaintiff as a court of equity ought formerly to have given if the like matters had been relied on by way of defence in any proceeding instituted for the same or like purpose.

*Equitable Rights Appearing Incidentally*

- (f) The court shall recognize and take notice of all equitable estates, titles and rights, and all equitable duties and liabilities appearing incidentally in the course of any proceedings,

## Section 18

18. In every civil cause or matter, law and equity shall be administered according to the following rules:

- t. Where a plaintiff claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against a deed, instrument or contract, or against a right, title or claim asserted by a defendant in such cause or matter, or to any relief founded upon a legal right that before the commencement of The Ontario Judicature Act, 1881 could only have been given by a court of equity, the Supreme Court and every judge shall give to the plaintiff such and the same relief as ought to have been given by the Court of Chancery in a suit or proceeding for the same or the like purposes properly instituted before the commencement of that Act.
3. Where a defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract, or against any right, title or claim asserted by a plaintiff in such cause or matter, or alleges any ground of equitable defence to a claim of the plaintiff in such cause or matter, the court and every judge shall give to every equitable estate, right or ground of relief so claimed and to every ground of equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff, as the Court of Chancery ought to have given if the same or the like matters had been relied on by way of defence in a suit or proceeding instituted in that court for the same or the like purpose before the commencement of The Ontario Judicature Act, 1881.
5. The court and every judge shall recognize and take notice of all equitable estates, titles and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court of Chancery would have recognized and taken notice of the same in any suit or proceeding duly instituted therein before the commencement of The Ontario Judicature Act, 1881.

(g)

(8)

change

NOTES

## SECTION 42 CONTINUED

*Multiplicity of Proceedings to be Avoided*

- (g) The court, in the exercise of its jurisdiction in every cause or matter pending before it shall have power to grant and shall grant, either absolutely or on such terms and conditions as it deems just, all such remedies as any of the parties may appear to be entitled to in respect of any legal or equitable claim properly brought forward by them in the cause or matter, so that as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of those matters avoided.

## Section 18

18. In every civil cause or matter, law and equity shall be administered according to the following rules:

8. The court in the exercise of the jurisdiction vested in it by this Act in every cause or matter pending before it has power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as it deems just, all such remedies as any of the parties appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them in such cause or matter, so that, as far as possible, all matters so in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

NOTES

## Section 43

(1) The court may grant a permanent or interlocutory injunction restraining:

- (a) the repetition, continuance of, or the threatened or apprehended breach of contract or injury relating to any property or right;
- (b) the repetition, continuance of, or the threatened or apprehended waste, trespass, nuisance, disturbance, or commission of any tort or other wrongful act;
- (c) any injury occasioned to a party by the breach of a statute;
- (d) the threatened or apprehended breach of a provision of any judgment of the court; or
- (e) in any other case where it is just and equitable.

(2) Where the court has jurisdiction to grant an injunction, the court may grant a mandatory injunction requiring a party to restore matters to the state which existed prior to the breach of the contract, injury to property or right, the commission of a tort or wrongful act where:

- (a) compensation for the injury cannot be estimated or sufficiently compensated for in damages; or
- (b) it is necessary in the interests of justice to preserve or restore the rights of the parties.

(3) A mandatory injunction may also be granted where it is necessary to compel the performance of a duty created by statute.

NOTES

Section 44

Section 45

Section 21

Section 19(1)

change

change

**DAMAGES IN LIEU OF EQUITABLE RELIEF****Section 44**

Where the court has power:

- (a) to grant an injunction against the breach of any covenant, contract or agreement; or
- (b) to order the specific performance of any covenant, contract or agreement,

the court may award damages to the party injured either in addition to or in substitution for the injunction or specific performance.

**INTERLOCUTORY MANDAMUS, INJUNCTION, RECEIVER****Section 45**

The court may grant a mandamus or an injunction or appoint a receiver, by an interlocutory order, in all cases in which it appears to the court to be just or convenient so to do. Subject to the rules, any such order may be made either unconditionally or upon such terms and conditions as the court thinks just.

**Section 21**

21. Where the court has jurisdiction to entertain an application for an injunction against a breach of a covenant, contract or agreement, or against the commission or continuance of a wrongful act, or for the specific performance of a covenant, contract or agreement, the court may award damages to the party injured either in addition to or in substitution for the injunction or specific performance, and the damages may be ascertained in such manner as the court directs, or the court may grant such other relief as is considered just. R.S.O. 1960, c. 197, s. 18.

**Section 19**

19.—(1) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the court in all cases in which it appears to the court to be just or convenient that the order should be made, and any such order may be made either unconditionally or upon such terms and conditions as the court deems just, and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, the injunction may be granted, whether the person against whom it is sought is or is not in possession under any claim of title or otherwise or, if out of possession, does or does not claim a right to do the act sought to be restrained under a colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable. R.S.O. 1960, c. 197, s. 16(1).

NOTES

## Section 46

## Section 20

no change

## LABOUR DISPUTE

## Section 46

(1) In this section, "labour dispute" means a dispute or difference concerning terms, tenure or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(2) Subject to subsection (7), no injunction to restrain a person from any act in connection with a labour dispute shall be granted ex parte.

(3) In every application for an injunction to restrain a person from any act in connection with a labour dispute, the court must be satisfied that reasonable efforts to obtain police assistance, protection and action to prevent or remove any alleged danger of damage to property, injury to persons, obstruction of or interference with lawful entry upon or exit from the premises in question, or breach of the peace have been unsuccessful.

## Section 20

20.—(1) In this section, "labour dispute" means a dispute or difference concerning terms, tenure or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(2) Subject to subsection 7, no injunction to restrain a person from any act in connection with a labour dispute shall be granted ex parte.

(3) In every application for an injunction to restrain a person from any act in connection with a labour dispute, the court must be satisfied that reasonable efforts to obtain police assistance, protection and action to prevent or remove any alleged danger of damage to property, injury to persons, obstruction of or interference with lawful entry upon or exit from the premises in question, or breach of the peace have been unsuccessful.

NOTES

## Section 46

## Section 20

no change

## CONTINUED

(4) Subject to subsection (7), evidence in support of an application for an injunction to restrain a person from any act in connection with a labour dispute shall be provided by way of affidavits confined to statements of facts within the knowledge of the deponent, but any party may by notice to the party filing such affidavit, together with the proper conduct money, require the attendance of the deponent to be cross-examined at the hearing of the motion.

(5) An interim injunction to restrain a person from any act in connection with a labour dispute may be granted for a period of not longer than four days and, subject to subsection (7), only after two days notice of the application therefor has been given to the person or persons named in the application.

(6) At least two days notice of an application for an interim injunction to restrain a person from any act in connection with a labour dispute shall be given to the persons affected thereby and not named in the application,

(a) where such persons are members of a labour organization, by personal service upon an officer or agent of the labour organization; and

(b) where such persons are not members of a labour organization, by posting the notice in a conspicuous place at the location of the activity sought to be restrained where it can be read by any persons affected,

and service and posting under this subsection shall be deemed to be sufficient notice to all such persons.

(4) Subject to subsection 7, evidence in support of an application for an injunction to restrain a person from any act in connection with a labour dispute shall be provided by way of affidavits confined to statements of facts within the knowledge of the deponent, but any party may by notice to the party filing such affidavit, together with the proper conduct money, require the attendance of the deponent to be cross-examined at the hearing of the motion.

(5) An interim injunction to restrain a person from any act in connection with a labour dispute may be granted for a period of not longer than four days and, subject to subsection 7, only after two days notice of the application therefor has been given to the person or persons named in the application.

(6) At least two days notice of an application for an interim injunction to restrain a person from any act in connection with a labour dispute shall be given to the persons affected thereby and not named in the application,

(a) where such persons are members of a labour organization, by personal service upon an officer or agent of the labour organization; and

(b) where such persons are not members of a labour organization, by posting the notice in a conspicuous place at the location of the activity sought to be restrained where it can be read by any persons affected,

and service and posting under this subsection shall be deemed to be sufficient notice to all such persons.

## CONTINUED

(7) Where notice as required by subsections (5) and (6) is not given, the court may grant an interim injunction where,

- (a) the case is otherwise a proper one for the granting of an interim injunction; and
- (b) notice as required by subsections (5) and (6) could not be given because the delay necessary to do so would result in irreparable damage or injury, a breach of the peace or an interruption in an essential public service; and
- (c) reasonable notification by telephone or otherwise has been given to the persons to be affected or, where any of such persons are members of a labour organization, to an officer of that labour organization or to the person authorized under section 77 of *The Labour Relations Act*, to accept service of process under that Act on behalf of that labour organization or trade union, or where it is shown that such notice could not have been given; and
- (d) proof of all material facts for the purposes of clauses (a), (b) and (c) is established by *viva voce* evidence.

(8) The misrepresentation of any fact or the withholding of any qualifying relevant matter, directly or indirectly provided by or on behalf of the applicant for an injunction under this section, constitutes a contempt of court.

(9) Any judgment or order in an application under this section may be appealed to the Court of Appeal.

(7) Where notice as required by subsections 5 and 6 is not given, the court may grant an interim injunction where,

- (a) the case is otherwise a proper one for the granting of an interim injunction; and
- (b) notice as required by subsections 5 and 6 could not be given because the delay necessary to do so would result in irreparable damage or injury, a breach of the peace or an interruption in an essential public service; and
- (c) reasonable notification, by telephone or otherwise, has been given to the persons to be affected or, where any of such persons are members of a labour organization, to an officer of that labour organization or to the person authorized under section 77 of *The Labour Relations Act*, to accept service of process under that Act on behalf of that labour organization or trade union, or where it is shown that such notice could not have been given; and
- (d) proof of all material facts for the purposes of clauses a, b and c is established by *viva voce* evidence.

(8) The misrepresentation of any fact or the withholding of any qualifying relevant matter, directly or indirectly provided by or on behalf of the applicant for an injunction under this section, constitutes a contempt of court.

(9) Any judgment or order in an application under this section may be appealed to the Court of Appeal. 1970, c. 91, s. 1.

NOTES

## Section 47

## Section 19(2)-(7)

change in form

## OBSCENE PUBLICATIONS

## Section 47

(1) An action may be brought in the Supreme Court by or on behalf of the Attorney General for an injunction or mandamus restraining the publication of any newspaper, publication, pamphlet, magazine, periodical or other printed matter whatsoever that publishes continuously or repeatedly writings or articles that are obscene, immoral or otherwise injurious to public morals.

(2) An action may be brought in the Supreme Court by or on behalf of the Attorney General for an injunction or mandamus restraining the publication of any newspaper, publication, pamphlet, magazine, periodical or other printed matter whatsoever containing any writing, article or picture tending to insult, degrade, revile or expose to hatred, contempt or mockery Her Majesty or any member of the Royal Family.

(3) The court may, in addition to making such an order, require the defendant to enter into a recognizance in such sum and during such term as the court requires to carry out the terms of the order and to refrain from the publication of any writing, article or picture of a like nature.

(4) Upon the making of such order, the Attorney General may cause a copy thereof to be served personally upon any person and, if the person after the service publishes any such writing, article or picture, he is liable for contempt to the same extent as if he had been a party to the proceedings.

(5) An action under subsection (1) or (2) may be brought against anyone printing, publishing or distributing any publication of the kind mentioned in subsection (1) or (2).

(6) In an action brought under subsection (1), (2) or (5), the judge may on such material as he sees fit grant an interlocutory injunction or mandamus.

(2) An action may be brought in the Supreme Court by or on behalf of the Minister of the Attorney General for an injunction or mandamus restraining the publication of any newspaper, publication, pamphlet, magazine, periodical or other printed matter whatsoever that publishes continuously or repeatedly writings or articles that are obscene, immoral, or otherwise injurious to public morals.

(3) An action may be brought in the Supreme Court by or on behalf of the Minister of the Attorney General for an injunction or mandamus restraining the publication of any newspaper, publication, pamphlet, magazine, periodical or other printed matter whatsoever containing any writing, article or picture tending to insult, degrade, revile or expose to hatred, contempt or mockery Her Majesty or any member of the Royal Family. R.S.O. 1960, c. 197, s. 16(2), 3).

(4) The court may, in addition to making such order, require the defendant to enter into a recognizance in such sum and during such term as the court requires to carry out the terms of the order and to refrain from the publication of any writing, article or picture of a like nature. R.S.O. 1960, c. 197, s. 16(4).

(5) Upon the making of such order, the Minister of the Attorney General may cause a copy thereof to be served personally upon any person and, if the person after the service publishes any such writing, article or picture, he is liable for contempt to the same extent as if he had been a party to the proceedings. R.S.O. 1960, c. 197, s. 16(5).

(6) An action under subsection 2 or 3 may be brought against anyone printing, publishing or distributing any publication of the kind mentioned in subsection 2 or 3.

(7) In an action brought under subsection 2, 3 or 6, the judge may on such material as he sees fit grant an interlocutory injunction or mandamus. R.S.O. 1960, c. 197, s. 16(6), 7.

## NOTES

Section 48	Section 18(2)	no change
Section 49(1)	Section 131	no change
(2), (3)	Section 132(1), (2)	no change
(4)	Section 133	no change

## DECLARATORY JUDGMENTS

## Section 48

No action or proceeding is open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the court may make binding declarations of right whether or not any consequential relief is or could be claimed.

## Section 18

18. In every civil cause or matter, law and equity shall be administered according to the following rules:
2. No action or proceeding is open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the court may make binding declarations of right, whether or not any consequential relief is or could be claimed,

## SET OFF

## Section 49

(1) Where there are mutual debts between the plaintiff and defendant, or, if either party sue or be sued as executor or administrator, where there are mutual debts between the testator or intestate and either party, one debt may be set against the other.

(2) Mutual debts may be set against each other, notwithstanding that such debts are deemed in law to be of a different nature, except where either of the debts accrue by reason of a penalty contained in any bond or specialty.

(3) Where either the debt for which the action is brought or the debt intended to be set against the same has accrued by reason of any such penalty, the debt intended to be set off shall be pleaded and it shall be shown by the pleading how much is truly and justly due on either side, and if the plaintiff recovers in any such action, judgment shall be entered for no more than appears to be truly and justly due to the plaintiff after one debt is set against the other.

(4) If, upon a defence of set off, a larger sum is found to be due from the plaintiff to the defendant than is found to be due from the defendant to the plaintiff, the defendant is entitled to judgment for the balance remaining due to him.

## Section 131

131. Where there are mutual debts between the plaintiff and defendant, or, if either party sue or be sued as executor or administrator, where there are mutual debts between the testator or intestate and either party, one debt may be set against the other. R.S.O. 1960, c. 197, s. 128.

## Section 132

132.—(1) Mutual debts may be set against each other, notwithstanding that such debts are deemed in law to be of a different nature, except where either of the debts accrue by reason of a penalty contained in any bond or specialty.

(2) Where either the debt for which the action is brought or the debt intended to be set against the same has accrued by reason of any such penalty, the debt intended to be set off shall be pleaded and it shall be shown by the pleading how much is truly and justly due on either side, and if the plaintiff recovers in any such action, judgment shall be entered for no more than appears to be truly and justly due to the plaintiff after one debt is set against the other. R.S.O. 1960, c. 197, s. 129.

## Section 133

133. If, upon a defence of set off, a larger sum is found to be due from the plaintiff to the defendant than is found to be due from the defendant to the plaintiff, the defendant is entitled to judgment for the balance remaining due to him. R.S.O. 1960, c. 197, s. 130.

Section 50(1), (2), (3)	Section 41(1), (2), (3)	change
(4), (5)	(4), (5)	

NOTES

**CERTIFICATE OF PENDING LITIGATION**

**Section 50**

(1) The commencement of a proceeding in which any title to or interest in land is brought in question shall not be deemed notice of the proceeding to any person not a party to it until, where the land is registered under *The Land Titles Act*, a caution is registered under that Act, or in other cases, until a certificate, signed by the registrar of the court, has been registered in the registry office of the registry division in which the land is situate.

(2) The certificate may be in the following form:

*I certify that in a proceeding in the .....  
Court of ..... between A.B., of .....  
and C.D., of ..... some title or interest is  
called in question in the following land: (describing it).*

*Dated at ..... this ..... day of .....,  
19..*

(3) Subsection (1) does not apply to an action or proceeding for foreclosure or sale upon a registered mortgage or charge, or to enforce a lien under *The Mechanics' Lien Act*.

(4) Any party who registers a certificate or caution referred to in subsection (1) without a reasonable claim to title to or interest in the land is liable for any damages sustained by any person as a result of its registration.

(5) The liability for damages under subsection (4) and the amount thereof may be claimed in the same proceeding or in a separate proceeding.

**Section 41**

41.—(1) The institution of an action or the taking of a proceeding in which any title to or interest in land is brought in question shall not be deemed notice of the action or proceeding to any person not a party to it until, where the land is registered under *The Land Titles Act*, a caution is registered under that Act, or in other cases, until a certificate, signed by the proper officer of the court, has been registered in the registry office of the registry division in which the land is situate.

(2) The certificate may be in the following form:

*I Certify that in an action or proceeding in the Supreme Court of  
Ontario between A.B., of ..... and C.D.,  
of ..... some title or interest is called in question  
in the following land: (describing it).  
Dated at (stating place and date)*

R.S.O. 1960, c. 197, s. 38(1,2).

(3) Subsection 1 does not apply to an action or proceeding for foreclosure or sale upon a registered mortgage or to enforce a lien under *The Mechanics' Lien Act*. R.S.O. 1960, c. 197, s. 38(3); 1966, c. 73, s. 1.

(4) Any person who registers a certificate or caution referred to in subsection 1 without a reasonable claim to title to or interest in the land is liable for any damages sustained by any person as a result of its registration.

(5) The liability for damages under subsection 4 and the amount thereof may be determined in an action commenced therefor in the court in which the certificate is issued or by application in the proceeding for an order to vacate the caution or certificate or in the action or proceeding in which the question of title to or interest in the land is determined. 1977, c. 51, s. 4(1).

NOTES

SECTION 50 CONTINUED

(6) Where a caution or certificate has been registered and the plaintiff or applicant, at whose instance it was issued, does not in good faith prosecute the proceeding, the court in which the proceeding was commenced may at any time make an order vacating the caution or certificate.

(7) Where a caution or certificate has been registered and the claim of the plaintiff or applicant is not solely to recover any title to or interest in land but to recover money chargeable on or payable out of land, or some interest in it, or for the payment of which he claims that the land or such interest ought to be subjected, or where the plaintiff or applicant claims any title to or interest in land, and in the alternative, damages or compensation in money, the court in which the proceeding was commenced may at any time make an order vacating the caution or certificate upon such terms as to giving security or otherwise as may seem just.

(8) The court in which the proceeding was commenced may at any time vacate the registration upon such other ground as may seem just.

(9) On a motion under this section, the court may order any of the parties to the proceeding to pay the costs of any of the other parties thereto, or may make any other order with respect to costs that under all the circumstances may seem just.

(10) The order vacating a caution or certificate is subject to appeal, and the order may be registered in the same manner as a judgment affecting land, but the court granting the order may order a stay of the registration pending the disposition of the appeal.

(11) Where a caution or certificate is vacated, and the order vacating it has been registered, any person may deal in respect to the land as fully as if the caution or certificate had not been registered, and it is not incumbent on any purchaser or mortgagee to inquire as to the allegations in the proceeding, and his rights are not affected by his being aware of such allegations.

Section 42

(2).—(1) Where a caution or certificate has been registered and the plaintiff or other party at whose instance it was issued does not in good faith prosecute the action or proceeding, a judge of the court in which the action or proceeding was commenced may at any time make an order vacating the caution or certificate. R.S.O. 1960, c. 197, s. 39(1); 1974, c. 81, s. 2.

(2) Where a caution or certificate has been registered and the plaintiff's claim is not solely to recover land or an estate or interest in land but to recover money or money's worth, chargeable on or payable out of land, or some estate or interest in it, or for the payment of which he claims that the land or such estate or interest ought to be subjected, or where the plaintiff claims land or some estate or interest in land, and, in the alternative, damages or compensation in money or money's worth, a judge of the court in which the action or proceeding was commenced may at any time give an order vacating the caution or certificate upon such terms as to giving security or otherwise as is considered just. R.S.O. 1960, c. 197, s. 39(2); 1977, c. 51, s. 5(1).

(3) A judge of the court in which the action or proceeding was commenced may at any time vacate the registration upon any other ground that is considered just. R.S.O. 1960, c. 197, s. 39(3); 1977, c. 51, s. 5(2).

(4) On an application under this section, the judge may order any of the parties to it to pay the costs of any of the other parties to it, or may make any other order with respect to costs that under all the circumstances is considered just. R.S.O. 1960, c. 197, s. 39(4).

(5) The order vacating a caution or certificate is subject to appeal according to the practice in like cases and may be registered in the same manner as a judgment affecting land, except that the judge granting the order may order a stay of the registration for the purposes of the appeal. R.S.O. 1960, c. 197, s. 39(5); 1977, c. 51, s. 5(3).

(6) Where a caution or certificate is vacated, any person may deal in respect to the land as fully as if the caution or certificate had not been registered, and it is not incumbent on any purchaser or mortgagee to inquire as to the allegations in the action or proceeding, and his rights are not affected by his being aware of such allegations. R.S.O. 1960, c. 197, s. 39(6).

NOTES

## INTERIM RECOVERY OF PERSONAL PROPERTY

## Section 51

(1) In any action in which the recovery of personal property is claimed, and it is alleged that the property was unlawfully taken from the possession of the plaintiff, or is unlawfully detained by the defendant, the plaintiff may apply to the court for an interim order for its recovery.

(2) Where a plaintiff recovers possession of personal property, pursuant to an interim order under subsection (1), but fails in his action, he is liable to the defendant for any loss sustained by the defendant resulting from the interim recovery of the property.

(3) Where the defendant recovers possession of the property by reason of having the interim order obtained by the plaintiff set aside and the plaintiff succeeds in his action, the defendant is liable to the plaintiff for any loss sustained by the plaintiff resulting from the property having been returned to the possession of the defendant.

(4) The liability for damages under subsection (2) and the amount thereof may be claimed by counterclaim, and the liability for damages under subsection (3) and the amount thereof may be claimed in the action.

(5) Where a sheriff has an interim order for the recovery of personal property and, on reasonable and probable grounds, believes that the property to be recovered, or any part thereof, is located in any building or other enclosure, he may, except on Sunday, enter such building or enclosure by any means necessary for the purpose of recovering the property. Where the building is a dwelling, he may only enter between the hours of 8:00 a.m. and 8:00 p.m.

(6) Where a sheriff has an interim order for the recovery of personal property and, on reasonable and probable grounds, believes that the property is concealed about the person of an individual, he may search the individual, if necessary, for the purpose of recovering the property.

## CHAPTER 412

## The Replevin Act

1. In this Act, "sheriff" includes any officer to whom an execution or other process is directed. R.S.O. 1960, c. 352, s. 1. Interpretation

2. Where goods, chattels, deeds, bonds, debentures, promissory notes, bills of exchange, books of account, papers, writings, valuable securities or other personal property or effects have been wrongfully distrained or have been otherwise wrongfully taken or detained, the owner or other person capable of maintaining an action for damages therefor may bring an action of replevin for the recovery thereof and of the damages sustained by reason of the restraint, taking or detention. R.S.O. 1960, c. 352, s. 2. Where goods may be replevied

3. An action of replevin shall not be brought for the recovery of personal property seized under process by and in the custody of a sheriff, or for the recovery of liquor within the meaning of *The Liquor Control Act* seized under any Act of the Legislature. R.S.O. 1960, c. 352, s. 3. Goods seized under legal process

4. Where a sheriff has in his hands an order of replevin and the property to be replevied or any part of it is reasonably supposed to be secured or concealed in a dwelling house of the defendant or of any other person holding it for him and the sheriff publicly demands at the door of the dwelling house delivery of the property to be replevied and it is not delivered to him within six hours after the demand, he may, and shall, if necessary, but during daylight only, break open the dwelling house for the purpose of replevying the property or any part of it, and, if found therein, shall make replevin according to the order. R.S.O. 1960, c. 352, s. 4. Power of sheriff

5. Where the property to be replevied, or any part of it is reasonably supposed to be secured or concealed in an enclosure other than a dwelling house of the defendant or of any other person holding it for him and the sheriff publicly demands at the enclosure delivery of the property to be replevied and it is not forthwith delivered to him, he may, and shall, if necessary, at once break open the enclosure for the purpose of replevying the property, or any part thereof, and, if found therein, shall make replevin according to the order. R.S.O. 1960, c. 352, s. 5. When concealed in other enclosure

NOTES

## Section 51

## The Replevin Act

change

## CONTINUED

(7) Any personal property in the possession of a sheriff pursuant to an interim order under subsection (1) shall be at the risk of the plaintiff unless it can be shown that any loss was occasioned by the negligence of the sheriff, his servants or agents.

(8) A plaintiff shall not be entitled to an interim order for the recovery of personal property seized under process by and in the custody of a sheriff, or for the recovery of liquor within the meaning of *The Liquor Control Act* seized under any act of the Legislature.

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Chap. 412

When con-  
cealed on  
person, etc

REPLEVIN

Sec. 6

6. Where the property to be replevied or any part of it is reasonably supposed to be concealed either about the person or on the premises of the defendant or of any other person holding it for him and the sheriff demands from the defendant or such other person delivery thereof and delivery is neglected or refused, he may, and, if necessary shall, search and examine the person, and, subject to sections 4 and 5, the premises of the defendant or other person, for the purpose of replevying the property or any part of it, and, if found, shall make replevin according to the order. R.S.O. 1960, c. 352, s. 6.

NOTES

Section 52(1), (2)	Section 80	change
Section 53(1), (2)	Section 140(1), (2)	change

**VESTING ORDERS****Section 52**

(1) In every case in which the court has authority to order the execution of a deed, conveyance, contract, transfer or assignment of any property, real or personal, or other document, or the endorsement of any negotiable instrument, the court may by order vest such real or personal property in such person or persons, and in such manner, and for such estates as would be done by any such deed, conveyance, contract, assignment, transfer or endorsement, if executed.

(2) The order shall have the same effect as if the legal or other estate or interest in the property had been actually conveyed by deed or otherwise for the same estate or interest to the person in whom the same is so ordered to be vested or, in the case of a chose in action, as if such chose in action had been actually assigned to such last-mentioned person.

**EXECUTION OF INSTRUMENTS BY ORDER OF THE COURT****Section 53**

(1) Where any person neglects or refuses to comply with a judgment directing him to execute any deed, conveyance, contract, transfer or assignment of any property, real or personal, or other document, or to endorse any negotiable instrument, the court may, on such terms and conditions as may be just, order that such deed, conveyance, contract, transfer, assignment, or other document be executed, or that such negotiable instrument be endorsed by such person as the court may nominate for that purpose.

(2) In such case the conveyance, contract, transfer, assignment, document, or instrument, so executed or endorsed shall operate and be for all purposes effective and binding, as if it had been executed or endorsed by the person originally directed to execute or endorse it.

**Section 80**

80. Where the court has authority to direct the sale of any real or personal property or to order the execution of a deed, conveyance, transfer or assignment of any real or personal property, the court may by order vest the property in such person and in such manner and for such estates as would be done by any such deed, conveyance, assignment or transfer if executed; and the order has the same effect as if the legal or other estate or interest in the property had been actually conveyed by deed or otherwise, for the same estate or interest, to the person in whom the property is so ordered to be vested or, in the case of a chose in action, as if it had been actually assigned to the last-mentioned person. R.S.O. 1960, c. 197, s. 77.

**Section 140**

140.—(1) Where a person has been directed by a judgment or order to execute a deed or other instrument, or make a surrender or transfer, and has refused or neglected to execute the deed or instrument, or make the surrender or transfer, and has been committed to prison under process for such contempt, or, being confined in prison for any other cause, has been charged with or detained under process for such contempt, and remains in prison, the court may grant a vesting order or may order or appoint an officer of the court to execute the deed or other instrument, or to make the surrender or transfer for and in the name of such person.

(2) The execution of such deed or other instrument, or the surrender or transfer in his name made by such officer, has in all respects the same force and validity as if it had been executed or made by the person himself.

NOTES

<b>Section 54</b>	<b>Section 22</b>	<b>change in form</b>
<b>Section 55(1)</b>	<b>Section 18(6)</b>	<b>change</b>
(2)	<b>Section 24</b>	<b>change</b>

**RELIEF AGAINST PENALTIES, ETC.****Section 54**

The court shall have the power to relieve against all penalties and forfeitures and, in granting such relief, to impose such terms as to costs, expenses, damages, compensation and all other matters as may seem just.

**STAY OF PROCEEDINGS****Section 55**

(1) No proceeding in the Supreme Court shall be restrained by prohibition or injunction; but any person affected by an order in any proceeding in any court, whether or not a party to the proceeding may apply to the court in which the proceeding is pending for a stay of proceedings, either generally or so far as may be necessary for the purposes of justice, and the court shall thereupon make such order as may seem just.

(2) Where a proceeding is brought in any court in Ontario for a cause of action for which a proceeding has been brought and is pending between the same parties or their representatives in any place out of Ontario, the court may make an order staying such proceeding in Ontario until satisfactory proof is offered to the court that the proceeding so brought in such other place out of Ontario is determined or discontinued.

**Section 22**

22. The court has power to relieve against all penalties and forfeitures, and, in granting such relief, to impose such terms as to costs, expenses, damages, compensation and all other matters, as are considered just. R.S.O. 1960, c. 197, s. 19.

**SECTION 18**

6. No cause or proceeding shall be restrained by prohibition or injunction, but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, prior to The Ontario Judicature Act, 1881, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto, but nothing in this Act disables the court from directing a stay of proceedings in any cause or matter pending before it, and any person, whether or not a party to any such cause or matter, who would have been entitled, before the commencement of The Ontario Judicature Act, 1881, to apply to a court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, may apply in the court by motion in a summary way, for a stay of proceedings in such cause or matter either generally, or so far as may be necessary for the purposes of justice, and the court shall thereupon make such order as is deemed just.

**Section 24**

23. Where an action is brought in the Supreme Court for a cause of action for which a suit or action has been brought and is pending between the same parties or their representatives in any place or country out of Ontario, the court may make an order staying proceedings in the Supreme Court until satisfactory proof is offered to the court that the suit or action so brought in such other place or country out of Ontario is determined or discontinued. R.S.O. 1960, c. 197, s. 21.

NOTES

Section 56	Section 139	change in form
Section 57	Section 128	change in form
Section 58(1), (2)	Section 23(1), (2)	change in form

**INDEMNITY TO PERSONS ACTING UNDER JUDGMENT****Section 56**

Any order or judgment of the court made in any proceeding effectually protects and indemnifies any person acting thereon in good faith.

**Section 139**

139. Any order or judgment of the court made in an action or upon an originating motion, special case or in any other way permitted by the rules or any statute effectually protects and indemnifies any person acting thereon in good faith. R.S.O. 1960, c. 197, s. 136.

**DEMISE OF CROWN****Section 57**

No proceeding in any court shall be discontinued or stayed by reason of the demise of the Crown, but it may be continued as if the demise had not happened.

**Section 128**

128. No action or other proceeding in any court shall be discontinued or stayed by reason of the demise of the Crown, but it shall be proceeded with as if such demise had not happened. R.S.O. 1960, c. 197, s. 125.

**CONSTITUTIONAL QUESTIONS****Section 58**

(1) In any proceeding in which the Attorney General for Canada or the Attorney General for Ontario is a party plaintiff and the other Attorney General is a party defendant, the court has jurisdiction to make a declaration as to the validity in whole or in part of any act of the Legislature or any act of the Parliament of Canada that by its terms purports to have force in Ontario, though no further relief is sought.

(2) The judgment in any such proceeding is subject to appeal as in ordinary cases.

**Section 23**

23.—(1) In any action in which the Attorney General for Canada or the Minister of the Attorney General for Ontario is a party plaintiff and the other attorney general is a party defendant, the court has jurisdiction to make a declaration as to the validity in whole or in part of any Act of the Legislature or any Act of the Parliament of Canada that by its terms purports to have force in Ontario, though no further relief be prayed or sought. R.S.O. 1960, c. 197, s. 20(1).

(2) The judgment in any such action is subject to appeal as in ordinary cases. R.S.O. 1960, c. 197, s. 20(2).

NOTES

**Section 59(1), (4), (5)**  
**(2), (3)**

**Section 36(1), (4), (5)**  
**(2), (3)**

**change in form**  
**no change**

**Section 59**

(1) Where in any proceeding the constitutional validity of any act or part of an act of the Parliament of Canada or of the Legislature is brought in question, it shall not be adjudged to be invalid until after notice has been given to the Attorney General for Canada and to the Attorney General for Ontario.

(2) The notice shall state what act or part of an act is in question and the day on which the question is to be argued, and shall give such other particulars as are necessary to show the constitutional point proposed to be argued.

(3) Subject to the rules, the notice shall be served six days before the day named for the argument.

(4) The Attorney General for Canada and the Attorney General for Ontario are entitled as of right to be heard either in person or by counsel notwithstanding that the Crown is not a party to the proceeding.

(5) Where in a proceeding to which this section applies, the Attorney General for Canada or the Attorney General for Ontario appears in person or by counsel, each shall be deemed to be a party to the proceeding for the purpose of an appeal from any adjudication as to the constitutional validity of any act or part of an act in question in the proceeding and each has the same rights with respect to an appeal as any other party to the proceeding.

**Section 36**

36.—(1) Where in an action or other proceeding the constitutional validity of any Act or enactment of the Parliament of Canada or of the Legislature is brought in question, it shall not be adjudged to be invalid until after notice has been given to the Attorney General for Canada and to the Minister of the Attorney General for Ontario. R.S.O. 1960, c. 197, s. 33(1).

(2) The notice shall state what Act or part of an Act is in question and the day on which the question is to be argued, and shall give such other particulars as are necessary to show the constitutional point proposed to be argued.

(3) Subject to the rules, the notice shall be served six days before the day named for the argument. R.S.O. 1960, c. 197, s. 33 (2, 3).

(4) The Attorney General for Canada and the Minister of the Attorney General of Ontario are entitled as of right to be heard either in person or by counsel notwithstanding that the Crown is not a party to the action or proceeding.

(5) Where in an action or proceeding to which this section applies the Attorney General for Canada or the Minister of the Attorney General for Ontario appears in person or by counsel, each shall be deemed to be a party to the action or proceeding for the purpose of an appeal from any adjudication as to the constitutional validity of any Act or enactment in question in the action or proceeding and each has the same rights with respect to an appeal as any other party to the action or proceeding. R.S.O. 1960, c. 197, s. 33 (4, 5).

NOTES

## Section 60(1), (2), (3)

## Section 137

change

## PERPETUATING TESTIMONY

## Section 60

(1) Where a person desires to perpetuate the testimony of himself or any other person in respect of any proceeding within the jurisdiction of the court which, for any sufficient reason, he cannot presently bring or cause to be brought, he may make an application to the court, styled in the matter of an intended proceeding, for leave to perpetuate such testimony.

(2) The Notice of Application shall be served on any person the applicant expects will be a party to the proceeding and on any other person whom the court may direct.

(3) The evidence shall be taken in such manner as the court directs and, when taken and transcribed, shall be filed with the court. An order under this section may provide that the examination be recorded by videotape or other similar means either in addition to or in substitution for a typewritten transcript.

## Section 137

137. Any person who would, under the circumstances alleged by him to exist, become entitled, upon the happening of any future event, to any office or to any estate or interest in any property, real or personal, the right or claim to which cannot by him be brought to trial before the happening of the event, is entitled to maintain an action in the Supreme Court to perpetuate any testimony that may be material for establishing his claim or right, and all laws, rules and regulations, not contrary to this section, in force or in use in suits to perpetuate testimony, or respecting depositions taken in such actions in making such depositions, are in force and shall be used and applied in all actions instituted under this section and in respect of depositions taken in the action. R.S.O. 1960, c. 197, s. 134.

NOTES

Section 61(1), (2), (3)

Section 38(1), (2) &amp;

change

Section 40(1)

**INTEREST RATE****Section 61**

(1) For the purposes of Sections 62 and 63, there shall be a fixed rate of interest for each quarter of the calendar year to be known as the judicial rate of interest and that rate shall be equivalent to the bank rate, as determined by the Bank of Canada, in effect at the close of business on the first day of the last month of the previous quarter; provided that, where the bank rate is not a whole number, the judicial rate shall be equivalent to the nearest whole number below the bank rate.

(2) The Registrar of the Supreme Court shall, on or before the fifteenth day of the last month of each quarter, ascertain the judicial rate of interest for the next ensuing quarter as provided in subsection (1) and forthwith thereafter publish that rate in the Ontario Gazette as a cumulative schedule to the Ontario Rules of Civil Procedure.

(3) In the absence of publication as provided in subsection (2), the judicial rate of interest for any particular quarter may be proved by affidavit.

**Section 38**

38.—(1) In this section, "prime rate" means the lowest rate of interest quoted by chartered banks to the most credit-worthy borrowers for prime business loans, as determined and published by the Bank of Canada.

(2) For the purposes of establishing the prime rate, the periodic publication entitled the Bank of Canada Review purporting to be published by the Bank of Canada is admissible in evidence as conclusive proof of the prime rate as set out therein, without further proof of the authenticity of the publication.

**Section 40**

40.—(1) A verdict or judgment bears interest from the time of the rendering of the verdict, or of giving the judgment, as the case may be, at the prime rate established in the same manner as for the purposes of section 38, notwithstanding that the entry of judgment has been suspended by a proceeding in the action, including an appeal.

## NOTES

## PRE JUDGMENT INTEREST

## Section 38

## Section 62

(1) Except as otherwise provided in this section, a person entitled to a judgment for the payment of money is entitled to claim and have included in the judgment an award of interest thereon at the judicial rate of interest in effect on the date the proceeding was commenced, which shall be calculated,

- (a) where the judgment is given upon a liquidated claim, from the date the cause of action arose, to the date of the judgment; or
- (b) where the judgment is given upon an unliquidated claim, from the date the person entitled to the judgment gave notice in writing of his claim to the person liable therefor, to the date of the judgment.

(2) Where the judgment awards special damages, interest shall only be awarded on the amount of special damages incurred in each six month period following the notice in writing referred to in clause (b) of subsection (1) and such interest shall be calculated from the end of each six month period to the date of the judgment.

(3) Subject to subsection 6, a person who is entitled to a judgment for the payment of money is entitled to claim and have included in the judgment an award of interest thereon,

- (a) at the prime rate existing for the month preceding the month on which the action was commenced; and
- (b) calculated,
  - (i) where the judgment is given upon a liquidated claim, from the date the cause of action arose to the date of judgment, or
  - (ii) where the judgment is given upon an unliquidated claim, from the date the person entitled gave notice in writing of his claim to the person liable therefor to the date of the judgment.

(4) Where the judgment includes an amount for special damages, the interest calculated under subsection 3 shall be calculated on the balance of special damages incurred as totalled at the end of each six month period following the notice in writing referred to in subclause II of clause b of subsection 3 and at the date of the judgment.

- (5) Interest under this section shall not be awarded,
  - (a) on exemplary or punitive damages;
  - (b) on interest accruing under this section;
  - (c) on an award of costs in the action;
  - (d) on that part of the judgment that represents pecuniary loss arising after the date of the judgment and that is identified by a finding of the court;
  - (e) except by consent of the judgment debtor where the judgment is given on consent;
  - (f) where interest is payable by a right other than under this section.

(6) The judge may, where he considers II to be just to do so in all the circumstances,

- (a) disallow interest under this section;
- (b) fix a rate of interest higher or lower than the prime rate;
- (c) allow interest under this section for a period other than that provided,

in respect of the whole or any part of the amount for which judgment is given. R.S.O. 1960, c. I-197, s. 35; 1977, c. 51, s. 3(1).

## NOTES

CONTINUED

## Section 38

(3) Interest under this section shall not be awarded,

- (a) on exemplary or punitive damages;
- (b) on damages expressly identified by a finding of the court as compensation for pecuniary loss arising after the date of the judgment;
- (c) on interest accruing under this section;
- (d) on costs awarded in the proceeding; or
- (e) where the judgment is given on consent except by consent of the judgment debtor.

(4) Where, in all the circumstances, it appears just and equitable to do so, the court may, in respect of the whole or any part of the amount for which judgment is given,

- (a) disallow interest under this section;
- (b) allow interest at a rate higher or lower than the judicial rate in effect on the date the proceeding was commenced;
- (c) allow interest to be calculated for a longer or shorter period than that provided for in subsection (1).

(3) Subject to subsection 6, a person who is entitled to a judgment for the payment of money is entitled to claim and have included in the judgment an award of interest thereon,

- (a) at the prime rate existing for the month preceding the month on which the action was commenced; and
- (b) calculated,
  - (i) where the judgment is given upon a liquidated claim, from the date the cause of action arose to the date of judgment; or
  - (ii) where the judgment is given upon an unliquidated claim, from the date the person entitled gave notice in writing of his claim to the person liable therefor to the date of the judgment.

(4) Where the judge includes an amount for special damages, the interest calculated under subsection 3 shall be calculated on the balance of special damages incurred or totalled at the end of each six month period following the notice in writing referred to in subclause II of clause b of subsection 3 and at the date of the judgment.

- (5) Interest under this section shall not be awarded,
- (a) on exemplary or punitive damages;
  - (b) on interest accruing under this section;
  - (c) on an award of costs in the action;
  - (d) on that part of the judgment that represents pecuniary loss arising after the date of the judgment and that is identified by a finding of the court;
  - (e) except by consent of the judgment debtor where the judgment is given on consent;
  - (f) where interest is payable by a right other than under this section.

(6) The judge may, where he considers it to be just to do so in all the circumstances,

- (a) disallow interest under this section;
- (b) fix a rate of interest higher or lower than the prime rate;
- (c) allow interest under this section for a period other than that provided.

In respect of the whole or any part of the amount for which judgment is given, R.S.O. 1960, c. 197, s. 35; 1977, c. 51, s. 3(1).

NOTES

(5), (6), (7)

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new

## SECTION C2 CONTINUED

(5) Where a person is entitled to have a default judgment upon a liquidated claim signed by an officer of the court and has claimed interest thereon, the judgment shall, subject to the provisions of subsection (6), include interest at the judicial rate in effect on the date the proceeding was commenced and calculated from the date the cause of action arose to the date of judgment.

(6) The foregoing provisions of this section do not apply to a judgment for the payment of money upon which interest is payable as of right, whether by agreement or by law; but such interest, if claimed, shall be included in the judgment, whether obtained on default or otherwise.

(7) This section applies only to proceedings commenced on or after the date this Act comes into force. Proceedings commenced before the coming into force of this Act shall continue to be governed by the provisions of Section 38, of *The Judicature Act, R.S.O. 1970, c. 228*, as amended, notwithstanding the repeal of that Act.

**NOTES****Section 63(1), (3)****(2), (4), (5),****Section 40(1), (2)****-****change in form****new****POST JUDGMENT INTEREST****Section 63**

(1) Except as otherwise provided in this section, a judgment for the payment of money shall bear interest from the date of the judgment at the judicial rate of interest in effect at the date of the judgment; notwithstanding that the enforcement of the judgment has been stayed in the meantime by an appeal or otherwise.

(2) Where, by any judgment, a person becomes entitled to the payment of costs, such costs shall bear interest from the date of the judgment at the judicial rate of interest in effect at the date of the judgment whether the costs are fixed by the judgment or referred for taxation.

(3) Where, in all the circumstances, it appears just and equitable to do so, the court may, in respect of the whole or any part of the amount for which judgment is given,

- (a) disallow interest under this section;
- (b) allow interest at a rate higher or lower than the judicial rate in effect at the date of the judgment;
- (c) allow interest from a date subsequent to the date of the judgment.

(4) No judgment shall bear interest under this section unless the rate of such interest is specified in the judgment or by a subsequent order of the court.

(5) Where a default judgment for the payment of money is signed by an officer of the court, the judgment shall provide for interest under subsection (1) and, if applicable, under subsection (2) from the date of the judgment at the judicial rate in effect at the date of the judgment.

**Section 40**

40.—(1) A verdict or judgment bears interest from the time of the rendering of the verdict, or of giving the judgment, as the case may be, at the prime rate established in the same manner as for the purposes of section 38, notwithstanding that the entry of judgment has been suspended by a proceeding in the action, including an appeal.

(2) The judge may, where he considers it to be just to do so in all the circumstances,

- (a) disallow interest under this section;
- (b) fix a rate of interest higher or lower than the prime rate;
- (c) fix a date other than the date of judgment from which interest is to run,

in respect of the whole or any part of the amount for which judgment is given. R.S.O. 1960, c. I-197, s. 37; 1979, c. 65, s. 4(1).

NOTES

(6), (7), (8)

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new

## SECTION C3 CONTINUED

(6) Where a judgment provides for periodic payments, each periodic payment shall bear interest under this section only from the date of default in the payment thereof.

(7) Notwithstanding the foregoing provisions of this section, the judgment of a court in Ontario based upon a foreign judgment, whether by action thereon or by registration, shall only bear interest at the rate expressed in such judgment or applicable to such judgment, if any, by the law of the jurisdiction in which such judgment was given.

(8) This section applies only to the judgment of a court of record in Ontario given on or after the date this Act comes into force. A judgment given before the coming into force of this Act shall continue to be governed by the provisions of Section 40 of *The Judicature Act, R.S.O. 1970, c. 228*, as amended, notwithstanding the repeal of that Act.

NOTES

Section 64(1)	Section 82(1)	change
(2)	(4)	no change
(3)	(2)	no change
(4), (5)	(5)	change in form

## COSTS

## Section 64

(1) Subject to the rules of court and the express provisions of any statute, the costs of and incidental to all proceedings authorized to be taken in court or before a judge are in the discretion of the court or judge, and the court or judge has full power to determine by whom and to what extent the costs shall be paid.

(2) Costs of proceedings before judicial officers, unless otherwise disposed of, are in their discretion subject to appeal.

(3) Nothing herein shall deprive a trustee, mortgagee or other person of any right to costs out of a particular estate or fund.

(4) In any proceeding to which Her Majesty is a party, as represented by the Attorney General of Ontario or otherwise, no costs adjudged to Her Majesty shall be disallowed or reduced merely because the solicitor or counsel in respect of whose services the costs are charged was a salaried officer of the Crown or for any other reason not entitled to recover from the Crown any costs in respect of the services so rendered.

(5) Any costs recovered by or on behalf of Her Majesty shall be paid into the Consolidated Revenue Fund.

## Section 82

82.—(1) Subject to the express provisions of any statute, the costs of and incidental to all proceedings authorized to be taken in court or before a judge are in the discretion of the court or judge, and the court or judge has full power to determine by whom and to what extent the costs shall be paid.

(2) Nothing herein shall deprive a trustee, mortgagee or other person of any right to costs out of a particular estate or fund.

(4) Costs of proceedings before judicial officers, unless otherwise disposed of, are in their discretion subject to appeal. R.S.O. 1960, c. 197, s. 79.

(5) In any proceeding to which Her Majesty is a party, either as represented by the Minister of the Attorney General of Ontario or otherwise, costs adjudged to Her Majesty shall not be disallowed or reduced upon taxation merely because the solicitor or the counsel who earned such costs, or in respect of whose services the costs are charged, was a salaried officer of the Crown performing such services in the discharge of his duty and remunerated therefor by his salary, or for that or any other reason not entitled to recover any costs from the Crown in respect of the services so rendered, and the costs recovered by or on behalf of Her Majesty in any such case shall be paid into the Consolidated Revenue Fund. 1966, c. 73, s. 3.

NOTES

Section 65(1)

(2)

(3)

Section 59

Section 62(4)

Section 61(1)

change

change

change

**TRIAL WITH OR WITHOUT A JURY****Section 65**

(1) Any action for libel, slander, malicious arrest, malicious prosecution and false imprisonment shall be tried by a jury unless the parties in person, or by their solicitors, waive such trial. In any such action, the filing and serving of a jury notice shall not be necessary.

(2) An action shall be tried by a judge without a jury where it relates to,

(a) the administration of the estate of a deceased person;

(b) the dissolution of a partnership or the taking of a partnership or other accounts;

(c) the foreclosure or the redemption of a mortgage;

(d) the sale and distribution of the proceeds of property subject to any lien or charge;

(e) the execution of a trust;

(f) the rectification, setting aside or cancellation of a deed or other written instrument;

(g) the specific performance of a contract;

(h) the partition or sale of real property;

(i) the custody or guardianship of a minor or the management of the estate of a minor;

(j) declaratory relief; or

(k) any other equitable relief.

(3) Subject to subsections (1) and (2) and any other statute, any action in the Supreme Court or a county court may be tried by a jury where so provided in the rules.

**Section 59**

59. Actions of libel, slander, malicious arrest, malicious prosecution and false imprisonment shall be tried by a jury, unless the parties in person or by their solicitors or counsel waive such trial. R.S.O. 1960, c. 197, s. 55; 1978, c. 2, s. 69(6).

**Section 62**

(4) Subsection 1 does not apply to causes, matters or issues over the subject of which the Court of Chancery had exclusive jurisdiction before the commencement of The Administration of Justice Act of 1873. R.S.O. 1960, c. 197, s. 58.

**Section 61**

61.—(1) Subject to the rules and except where otherwise expressly provided by this Act, all issues of fact shall be tried and all damages shall be assessed by the judge without the intervention of a jury.

NOTES

Section 66(1), (2)	Section 64(1), (2)	no change
Section 67	Section 65	no change

**JURY TRIALS****Section 66**

- (1) It is sufficient if five of the jurors agree, and a verdict rendered or question answered by five jurors has the same effect as a verdict or answer given by six jurors.
- (2) Where more questions than one are submitted, it is not necessary that the same five jurors agree to every answer.

**Section 64**

- 64.—(1) It is sufficient if five of the jurors agree, and a verdict rendered or question answered by five jurors has the same effect as a verdict or answer given by six jurors.
- (2) Where more questions than one are submitted, it is not necessary that the same five jurors agree to every answer. R.S.O. 1960, c. 197, s. 61.

**Section 67**

If at the trial of an action or issue or assessment of damages a juror dies or becomes incapacitated from any cause from continuing to sit or act on the jury, or if it is discovered that a juror has an interest in the result of the proceeding, or is a relative within the degree of first cousin of any of the parties, the judge may discharge him and direct that the trial or assessment proceed on such terms as he deems just with five jurors, and in that case the verdict or answer to a question given by the jury shall be unanimous.

**Section 65**

65. If at the trial of an action or issue or assessment of damages a juror dies or becomes incapacitated from any cause from continuing to sit or act on the jury, or if it is discovered that a juror has an interest in the result of the proceeding, or is a relative within the degree of first cousin of any of the parties, the judge may discharge him and direct that the trial or assessment proceed on such terms as he deems just with five jurors, and in that case the verdict or answer to a question given by the jury shall be unanimous. R.S.O. 1960, c. 197, s. 62.

NOTES

## Section 68(1)

(2)  
(3)

## Section 67(1)

(2)  
(3)

change

change in form  
no change

## Section 69

## Section 68

change in form

**Section 68**

(1) Upon a trial by jury, except in an action for libel, the judge may direct the jury to give a general verdict or may direct the jury to answer any questions specified by him and, when so directed, the jury shall answer such questions and shall not give a general verdict.

(2) In an action, tried by a jury, to which subsection (1) of Section 133 of *The Highway Traffic Act* applies, the judge may direct the jury to specify negligent acts or omissions that caused the damages or injuries in respect of which the action is brought.

(3) Judgment may be directed to be entered on the answers to such questions.

**Section 69**

In an action for malicious prosecution, the judge shall decide all questions both of law and fact necessary for determining whether or not there was reasonable and probable cause for the prosecution.

**Section 67**

67.—(1) Upon a trial by jury, except in an action of libel, the judge, instead of directing the jury to give either a general or a special verdict, may direct the jury to answer any questions of fact stated to them by him, and the jury shall answer such questions, and shall not give any verdict.

(2) In an action, tried by a judge and jury, to which subsection 1 of section 133 of *The Highway Traffic Act* applies, the judge may direct the jury to specify negligent acts or omissions that caused the damages or injuries in respect of which the action is brought.

(3) Judgment may be directed to be entered on the answers to such questions. R.S.O. 1960, c. 197, s. 64.

**Section 68**

68. In actions of malicious prosecution, the judge shall decide all questions both of law and fact necessary for determining whether or not there was reasonable and probable cause for the prosecution. R.S.O. 1960, c. 197, s. 65.

NOTES

Section 70(1), (2), (3), (4), (5)	Section 77(1), (2), (3), (4), (5)	no change
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**SURETY BONDS****Section 70**

(1) In this section *surety company* means a corporation empowered to give bonds by way of indemnity.

(2) The Lieutenant Governor in Council may direct that the bond of a surety company named in the order in council may be given as security in all cases where security is ordered to be given by any court or by any judge or officer of any court and in all cases where security for the cost of an appeal or for the prosecution of the appeal is required by any law, rule or practice.

(3) Every order in council made under subsection (2) shall be published forthwith in The Ontario Gazette and shall be laid before the Assembly within fifteen days after its making if the Assembly is then in session and, if it is not in session, within fifteen days after the opening of the next session.

(4) The bond of a surety company named in the order in council is sufficient without any other surety joining in the bond, and an affidavit of justification is not necessary.

(5) Notwithstanding anything in this section, any judge or any officer having jurisdiction in the matter may in his discretion disallow any such bond on a motion to disallow it, and upon any evidence that is considered sufficient.

**Section 77**

77.—(1) In this section, "surety company" means a corporation empowered to give bonds by way of indemnity.

(2) The Lieutenant Governor in Council may direct that the bond of a surety company named in the order in council may be given as security in all cases where security is ordered to be given by any court or by any judge or officer of any court and in all cases where security for the cost of an appeal or for the prosecution of the appeal is required by any law, rule or practice.

(3) Every order in council made under subsection 2 shall be published forthwith in The Ontario Gazette and shall be laid before the Assembly within fifteen days after its making if the Assembly is then in session and, if it is not in session, within fifteen days after the opening of the next session.

(4) The bond of a surety company named in the order in council is sufficient without any other surety joining in the bond, and an affidavit of justification is not necessary.

(5) Notwithstanding anything in this section, any judge or any officer having jurisdiction in the matter may in his discretion disallow any such bond on a motion to disallow it, and upon any evidence that is considered sufficient. R.S.O. 1960, c. L-7, s. 74.

NOTESLANGUAGE OF PROCEEDINGSSection 71

(1) Subject to subsections (2) to (9), writs, pleadings and proceedings in all courts shall be in the English language only, but the proper or known names of writs or other processes, or technical words, may be in the same language as has been commonly used.

(2) The Regional Municipality of Ottawa-Carleton, The United Counties of Prescott and Russell, the United Counties of Stormont, Dundas and Glengarry and the Territorial Districts of Algoma, Cochrane, Nipissing, Sudbury and Timiskaming and such additional counties and districts as are designated by the Lieutenant Governor in Council under subsection (3) are designated counties and districts for the purposes of this section.

(3) The Lieutenant Governor in Council may designate,

(a) counties and districts in addition to those named in subsection (2); and

(b) courts in a designated county or district,

for the purposes of this section.

(4) In a proceeding in a designated court, or in any court to which an appeal therefrom is made, the court shall, upon the application of a party who speaks the French language, direct that the hearing in the proceeding be conducted before a judge who speaks both the English and French languages or, where there is a jury, before a judge and jury who speak both the English and French languages.

Section 127

127.—(1) Subject to subsections 2 to 9 writs, pleadings and proceedings in all courts shall be in the English language only, but the proper or known names of writs or other processes, or technical words, may be in the same language as has been commonly used. R.S.O. 1960, c. 197, s. 124; 1978, c. 26, s. 1(1).

(2) The Regional Municipality of Ottawa-Carleton, The United Counties of Prescott and Russell, the United Counties of Stormont, Dundas and Glengarry and the Territorial Districts of Algoma, Cochrane, Nipissing, Sudbury and Timiskaming and such additional counties and districts as are designated by the Lieutenant Governor in Council under subsection 3 are designated counties and districts for the purposes of this section.

(3) The Lieutenant Governor in Council may designate,

- (a) counties and districts in addition to those named in subsection 2; and
- (b) courts in a designated county or district,

for the purposes of this section.

(4) In a proceeding in a designated court, or in any court to which an appeal therefrom is made, the court shall, upon the application of a party who speaks the French language, direct that the hearing in the proceeding be conducted before a judge who speaks both the English and French languages or, where there is a jury, before a judge and jury who speak both the English and French languages.

(5) Except by leave of the court, an application under subsection 4 shall be made,

- (a) where the proceeding is in the Supreme Court or a county or district court before the giving of a jury notice or, if none, before the proceeding is set down for trial;
- (b) where the proceeding is in a court other than the Supreme Court or a county or district court, before the hearing of any evidence in the proceeding.

(6) Where an application is made under subsection 4 and in addition to a direction made thereunder, the court may direct,

- (a) that the hearing or any part of the hearing be in the French language if, in the opinion of the court, the hearing or part can be so conducted effectively; and
- (b) that subsection 7 apply to oral evidence given in examinations for discovery or in any other pre-hearing stage of the proceeding.

(7) Evidence given in the French language in a proceeding in respect of which a direction is made under this section shall be received and recorded in the French language and shall be transcribed in that language for all purposes.

(8) Any document filed by a party in a proceeding in a small claims court in a designated county or district may be in the French language.

(9) The Lieutenant Governor in Council may make regulations prescribing forms of documents or of parts of documents in both the English and the French languages for use in or relating to proceedings in designated courts and requiring their use. 1978, c. 26, s. 1(2).

## NOTES

## CONTINUED

- (5) Except by leave of the court, an application under subsection (4) shall be made,
- (a) where the proceeding is in the Supreme Court or a county or district court before the giving of a jury notice or, if none, before the proceeding is set down for trial; or
  - (b) where the proceeding is in a court other than the Supreme Court or a county or district court, before the hearing of any evidence in the proceeding.
- (6) Where an application is made under subsection (4) and in addition to a direction made thereunder, the court may direct,
- (a) that the hearing or any part of the hearing be in the French language if, in the opinion of the court, the hearing or part can be so conducted effectively; and
  - (b) that subsection (7) apply to oral evidence given in examinations for discovery or in any other pre-hearing stage of the proceeding.
- (7) Evidence given in the French language in a proceeding in respect of which a direction is made under this section shall be received and recorded in the French language and shall be transcribed in that language for all purposes.
- (8) Any document filed by a party in a proceeding in a small claims court in a designated county or district may be in the French language.
- (9) The Lieutenant Governor in Council may make regulations prescribing forms of documents or of parts of documents in both the English and French languages for use in or relating to proceedings in designated courts and requiring their use.
- Section 127**
- (1) Subject to subsections 2 to 9 ~~writs, pleadings and proceedings~~ in all courts shall be in the English language only, but the proper or known names of writs or other processes, or technical words, may be in the same language as has been commonly used, R.S.O. 1960, c. 197, s. 124; 1978, c. 26, s. (11).
- (2) The Regional Municipality of Ottawa-Carleton, The United Counties of Prescott and Russell, the United Counties of Stormont, Dundas and Glengarry and the Territorial Districts of Algoma, Cochrane, Nipissing, Sudbury and Timiskaming and such additional counties and districts as are designated by the Lieutenant Governor in Council under subsection 3 are designated counties and districts for the purposes of this section.
- (3) The Lieutenant Governor in Council may designate,
- (a) counties and districts in addition to those named in subsection 2; and
  - (b) courts in a designated county or district, for the purposes of this section.
- (4) In a proceeding in a designated court, or in any court to which an appeal therefrom is made, the court shall, upon the application of a party who speaks the French language, direct that the hearing in the proceeding be conducted before a judge who speaks both the English and French languages or, where there is a jury, before a judge and jury who speak both the English and French languages.
- (5) Except by leave of the court, an application under subsection 4 shall be made,
- (a) where the proceeding is in the Supreme Court or a county or district court before the giving of a jury notice or, if none, before the proceeding is set down for trial;
  - (b) where the proceeding is in a court other than the Supreme Court or a county or district court, before the hearing of any evidence in the proceeding.
- (6) Where an application is made under subsection 4 and in addition to a direction made thereunder, the court may direct,
- (a) that the hearing or any part of the hearing be in the French language if, in the opinion of the court, the hearing or part can be so conducted effectively; and
  - (b) that subsection 7 apply to oral evidence given in examinations for discovery or in any other pre-hearing stage of the proceeding.
- (7) Evidence given in the French language in a proceeding in respect of which a direction is made under this section shall be received and recorded in the French language and shall be transcribed in that language for all purposes.
- (8) Any document filed by a party in a proceeding in a small claims court in a designated county or district may be in the French language.
- (9) The Lieutenant Governor in Council may make regulations prescribing forms of documents or of parts of documents in both the English and French languages for use in or relating to proceedings in designated courts and requiring their use. 1978, c. 26, s. (12).

NOTES

**PROHIBITION AGAINST PHOTOGRAPHING  
JUDICIAL PROCEEDINGS**

**Section 72**

- (1) In this section,
  - (a) *judge* means the person presiding at a judicial proceeding;
  - (b) *judicial proceeding* means a proceeding of a court of record;
  - (c) *precincts of the building* means the space enclosed by the walls of the building.
- (2) Subject to subsection (3), no person shall,
  - (a) take or attempt to take any photograph, motion picture or other record capable of producing visual representations by electronic means or otherwise,
    - (i) at a judicial proceeding, or
    - (ii) of any person entering or leaving the room in which the judicial proceeding is to be or has been convened, or
    - (iii) of any person in the precincts of the building in which the judicial proceeding is to be or has been convened where there is reasonable ground for believing that such person is there for the purpose of attending or leaving the proceeding; or
  - (b) publish, broadcast, reproduce or otherwise disseminate any photograph, motion picture or record taken or made in contravention of clause (a).

**Section 68a**

- 68a.—(1) In this section,
  - (a) "judge" means the person presiding at a judicial proceeding;
  - (b) "judicial proceeding" means a proceeding of a court of record;
  - (c) "precincts of the building" means the space enclosed by the walls of the building.
- (2) Subject to subsection 3, no person shall,
  - (a) take or attempt to take any photograph, motion picture or other record capable of producing visual representations by electronic means or otherwise,
    - (i) at a judicial proceeding, or
    - (ii) of any person entering or leaving the room in which the judicial proceeding is to be or has been convened, or
    - (iii) of any person in the precincts of the building in which the judicial proceeding is to be or has been convened where there is reasonable ground for believing that such person is there for the purpose of attending or leaving the proceeding; or
  - (b) publish, broadcast, reproduce or otherwise disseminate any photograph, motion picture or record taken or made in contravention of clause a.
- (3) Subsection 2 does not apply to any photograph, motion picture or record taken or made upon authorization of the judge,
  - (a) where required for the presentation of evidence or the making of a record or for any other purpose of the judicial proceeding;
  - (b) in connection with any investiture, ceremonial, naturalization or similar proceedings; or
  - (c) with the consent of the parties and witnesses, for such educational or instructional purposes as may be approved by the judge.
- (4) Every person who is in contravention of this section is guilty of an offence and on summary conviction is liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than six months, or to both. 1974, c. 81, s. 3.

Section 72(1), (2), (3), (4)   Section 68a(1), (2), (3), (4) no change

NOTES

CONTINUED

- (3) Subsection (2) does not apply to any photograph, motion picture or record taken or made upon authorization of the judge,
  - (a) where required for the presentation of evidence or the making of a record or for any other purpose of the judicial proceeding;
  - (b) in connection with any investive, ceremonial, naturalization or similar proceedings; or
  - (c) with the consent of the parties and witnesses, for such educational or instructional purposes as may be approved by the judge.
- (4) Every person who is in contravention of this section is guilty of an offence and on summary conviction is liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than six months, or to both.

**Section 68a**

- 68a.—(1) In this section,
  - (a) "judge" means the person presiding at a judicial proceeding;
  - (b) "judicial proceeding" means a proceeding of a court of record;
  - (c) "precincts of the building" means the space enclosed by the walls of the building.
- (2) Subject to subsection 3, no person shall,
  - (a) take or attempt to take any photograph, motion picture or other record capable of producing visual representations by electronic means or otherwise,
    - (i) at a judicial proceeding, or
    - (ii) of any person entering or leaving the room in which the judicial proceeding is to be or has been convened, or
    - (iii) of any person in the precincts of the building in which the judicial proceeding is to be or has been convened where there is reasonable ground for believing that such person is there for the purpose of attending or leaving the proceeding;
  - (b) publish, broadcast, reproduce or otherwise disseminate any photograph, motion picture or record taken or made in contravention of clause a.
- (3) Subsection 2 does not apply to any photograph, motion picture or record taken or made upon authorization of the judge,
  - (a) where required for the presentation of evidence or the making of a record or for any other purpose of the judicial proceeding;
  - (b) in connection with any investive, ceremonial, naturalization or similar proceedings; or
  - (c) with the consent of the parties and witnesses, for such educational or instructional purposes as may be approved by the judge.
- (4) Every person who is in contravention of this section is guilty of an offence and on summary conviction is liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than six months, or to both. 1974, c. K1, s. 3.

NOTES

Section 73(1)

(2)

Section 84

Section 114a

change

change

**OPEN COURT****Section 73**

(1) Every action shall be tried in open court unless the trial judge is satisfied that the possibility of serious prejudice or injustice to the parties or any of them outweighs the desirability of holding the trial in public.

(2) All motions and applications shall be heard in open court except as provided by the rules of court.

**Section 84**

84. When the judge presiding at the hearing or trial of a cause or matter deems it to be in the interest of public decency and morals, he may order that the public be excluded from the court. R.S.O. 1960, c. 197, s. 81.

**Section 114a**

114a. Notwithstanding the provisions of this or any other Act or regulation, all motions and applications shall be heard in open court, except as provided by the rules. 1977, c. 51, s. 9.

NOTES

<b>Section 74</b>	<b>Section 123</b>	<b>change</b>
<b>Section 75(1)</b> (2)	<b>Section 85(1)</b> (2)	<b>change</b> <b>no change</b>

**PART III****OFFICES AND OFFICERS****Section 74**

In addition to the provisions of this Part that are expressly made applicable to all courts or county courts, or are otherwise by their terms so applicable, Sections 90 and 102 apply, with any necessary modification, to the county courts.

**Section 75**

(1) There shall be such officers of the Supreme Court as are considered necessary by the Lieutenant Governor in Council for the due dispatch of the business of the court, and such officers shall be appointed by the Lieutenant Governor in Council.

(2) The duties of the officers shall be regulated by the rules and by the terms of any order in council governing such officers.

**Section 123**

123. In addition to the provisions of this Act that are expressly made applicable to all courts or county courts or are otherwise by their terms so applicable, sections 27, 35, 38, 41, 66 to 58, 64 to 68, 79, 80, 82, 114a, 119 and 120, mutatis mutandis apply to the county courts. R.S.O. 1960, c. 197, s. 120; 1977, c. 51, s. 12.

**Section 85**

85.—(1) There shall be such officers of the Supreme Court as are considered necessary by the Lieutenant Governor in Council for the due dispatch of the business of the court, and such officers, subject to section 102 as to special examiners, shall be appointed by the Lieutenant Governor in Council.

(2) The duties of the officers shall be regulated by the rules and by the terms of any order in council governing such officers. R.S.O. 1960, c. 197, s. 82.

NOTES

Section 76(1), (2), (3)

Section 86(1), (2), (3)

no change

**Section 76**

(1) Every officer shall, before entering upon the duties of his office, take and subscribe the following oath:

*I, ..... of ..... solemnly swear that I will, according to the best of my skill, learning, ability and judgment, well and faithfully execute and fulfill the duties of the office of ..... without favour or affection, prejudice or partiality to any person. So help me God.*

(2) The oath shall be administered by a judge in court.

(3) Where it is not convenient for a person appointed to an office to attend at Toronto to take the oath, it may be taken before a judge of the county court of the county in which the officer resides and, in every such case, the judge shall forthwith transmit the oath to, and it shall be filed in the office of the Registrar of the Supreme Court at Toronto.

**Section 86**

86.—(1) Every officer shall, before entering upon the duties of his office, take and subscribe the following oath:

*I, ..... of ..... solemnly swear that I will according to the best of my skill, learning, ability and judgment, well and faithfully execute and fulfill the duties of the office of ..... without favour or affection, prejudice or partiality to any person. So help me God.*

(2) The oath shall be administered by a judge in court.

R.S.O. 1960, c. 197, s. 83(1, 2).

(3) Where it is not convenient for a person appointed to an office to attend at Toronto to take the oath, it may be taken before the judge of the county court of the county in which the officer resides, and in every such case the judge shall forthwith transmit the oath to and it shall be filed in the office of the Registrar of the Supreme Court at Toronto, R.S.O. 1960, c. 197, s. 83(3); 1970, c. 97, s. 8.

NOTES

<b>Section 77</b>	<b>Section 87</b>	change
<b>Section 78(1), (2)</b>	<b>Section 88(1), (2)</b>	change
<b>Section 79(1), (2)</b>	<b>Section 89(1), (2)</b>	change

**Section 77**

With the prior approval of the Attorney General, every local registrar of the Supreme Court, county court clerk and surrogate court registrar may, by writing under his hand and seal of office, appoint a deputy who may perform all the duties required to be performed by the officer making the appointment, and the appointment shall be kept on file in his office.

**Section 78**

(1) In the event of the death, suspension, resignation, retirement or removal of a local registrar of the Supreme Court, county court clerk or surrogate court registrar, the deputy is the local registrar of the Supreme Court, county court clerk or surrogate court registrar, until the suspension is terminated or another person has been appointed and has assumed the duties of such officer.

(2) In the absence of a deputy, the Attorney General may appoint a temporary deputy.

**Section 79**

(1) An officer who is paid by salary shall not take for his own benefit, directly or indirectly, any fee or other remuneration except the salary to which he is entitled, and the fees payable in respect of proceedings in his office are payable to the Crown.

(2) Subsection (1) does not apply to the fees of any court reporter who is entitled to take the fees prescribed by order in council.

**Section 87**

87. With the approval of the Lieutenant Governor in Council, every local officer of the Supreme Court, county court clerk, and surrogate registrar, may, by writing under his hand and seal of office, appoint a deputy who may perform all the duties required to be performed by the officer making the appointment, R.S.O. 1960, c. 197, s. 84.

**Section 88**

88.—(1) In the event of the death, suspension, resignation, retirement or removal of a local registrar, county court clerk or surrogate registrar, the deputy local registrar, deputy county court clerk or deputy surrogate registrar, as the case may be, *in pro tempore* the local registrar, county court clerk or surrogate registrar, as the case may be, until the suspension is terminated or another person has been appointed and has assumed the duties of the local registrar, county court clerk or surrogate registrar, as the case may be.

(2) Where there is no deputy local registrar, deputy county court clerk or deputy surrogate registrar, in the absence of or in the event of the death, suspension, resignation, retirement or removal of the local registrar, county court clerk or surrogate registrar, as the case may be, the Crown attorney for the county *in pro tempore* the local registrar, county court clerk or surrogate registrar, as the case may be, until the suspension is terminated or another person has been appointed and has assumed the duties of the local registrar, county court clerk or surrogate registrar, as the case may be. R.S.O. 1960, c. 197, s. 86.

**Section 89**

89.—(1) Except where in this Act it is otherwise expressly provided, an officer who is paid by salary shall not take for his own benefit, directly or indirectly, any fee or emolument except the salary to which he is entitled, and the fees payable in respect of proceedings in his office are payable to the Crown.

(2) Subsection 1 does not apply to the fees of,

(a) a local registrar appointed before the 1st day of April, 1963, on an examination had before him as a special examiner or on a reference made to him as an official referee;

(b) a stenographic reporter for copies of shorthand notes of evidence, who is entitled to take the fees prescribed by order in council. R.S.O. 1960, c. 197, s. 86.

NOTES

Section 80(1)	Section 98(1)	
(2)	-	no change
(3)	Section 99b(1)	new
(4)	(2)	change change in form

**MASTERS****Section 80**

(1) The Lieutenant Governor in Council on the recommendation of the Attorney General may appoint such Masters of the Supreme Court as are considered necessary.

(2) No person shall be appointed a master unless he is a barrister and solicitor of Ontario, of not less than ten years standing.

(3) The Lieutenant Governor in Council on the recommendation of the Attorney General, may appoint a Senior Master.

(4) The Attorney General may designate a master to act in the place of the Senior Master for all purposes during his illness or absence.

**Section 98**

98.—(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint such Masters of the Supreme Court as are considered necessary.

**Section 99b**

99b.—(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint a master as Senior Master.

(2) The Attorney General may designate masters to act in the place of the Senior Master for all purposes during his illness or absence.

NOTES

Section 81	Section 99a	no change
Section 82(1), (2)	Section 99(1), (2)	change
(3)	(3)	no change
(4)	(4)	change in form

**Section 81**

The Judicial Council for Provincial Judges established under *The Provincial Courts Act* has the same powers and shall perform the same duties in respect of the appointment of and investigation of complaints against masters as it has or may perform in respect of provincial judges.

**Section 82**

(1) A master shall retire upon attaining the age of sixty-five years, but may retire at any time after completing ten years in office.

(2) Notwithstanding subsection (1), a master appointed before the 2nd day of December, 1968 shall retire upon attaining the age of seventy years, but may retire at any time after completing ten years in office.

(3) Upon attaining an age for retirement under subsection (1) or (2), a master may be reappointed to hold office during pleasure, but shall not hold office after attaining the age of seventy-five years.

(4) A master may at any time resign his office by a resignation in writing, signed by him and delivered to the Attorney General.

**Section 99a**

99a. The Judicial Council for Provincial Judges established under *The Provincial Courts Act* has the same powers and shall perform the same duties in respect of the appointment of and investigation of complaints against masters as it has or may perform in respect of provincial judges. 1976, c. 30, s. 4.

**Section 99**

99.—(1) Every master shall retire upon attaining the age of sixty-five years.

(2) Notwithstanding subsection 1, a master appointed before the 2nd day of December, 1968 shall retire upon attaining the age of seventy years.

(3) Upon attaining an age for retirement under subsection 1 or 2, a master may be reappointed to hold office during pleasure but shall not hold office after attaining the age of seventy-five years.

(4) A master may at any time resign his office in writing, signed by him and delivered to the Attorney General. R.S.O. 1960, c. 197, s. 96; 1975, c. 30, s. 4.

NOTES

Section 83(1), (2), (3)	Section 98(2), (3), (4)	no change
Section 84(1) (2)	Section 99b(3) -	change in form new

**Section 83**

(1) A master may be removed from office before attaining retirement age only for misbehaviour or for inability to perform his duties properly and only if,

- (a) the circumstances respecting the misbehaviour or inability are first inquired into; and
- (b) the master is given reasonable notice of the time and place for the inquiry and is afforded an opportunity, by himself or his counsel, of being heard and of cross-examining the witnesses and of producing evidence on his own behalf.

(2) For the purpose of making an inquiry under subsection (1), the Lieutenant Governor in Council may appoint one or more judges of the Supreme Court who shall make the inquiry and report thereon, and a judge so appointed has, for that purpose, the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which part applies to such inquiry as if it were an inquiry under that Act.

(3) An order removing a master from office under this section may be made by the Lieutenant Governor in Council, and the order and the report of the inquiry shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days after the commencement of the next ensuing session.

**Section 84**

(1) The Senior Master shall have general supervision and direction over the administration of the offices of the masters and the assigning of masters for hearings as circumstances may require.

(2) The Senior Master shall also have general supervision and direction over the administration of the offices of the local masters who are not county court judges.

**Section 98**

98

(2) A master may be removed from office before attaining retirement age only for misbehaviour or for inability to perform his duties properly and only if,

- (a) the circumstances respecting the misbehaviour or inability are first inquired into; and
- (b) the master is given reasonable notice of the time and place for the inquiry and is afforded an opportunity, by himself or his counsel, of being heard and of cross-examining the witnesses and of producing evidence on his own behalf.

(3) For the purpose of making an inquiry under subsection 2, the Lieutenant Governor in Council may appoint one or more judges of the Supreme Court who shall make the inquiry and report thereon, and a judge so appointed has, for that purpose, the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to such inquiry as if it were an inquiry under that Act.

(4) An order removing a master from office under this section may be made by the Lieutenant Governor in Council and the order and the report of the inquiry shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days after the commencement of the next ensuing session. R.S.O. 1960, c. 197, s. 96; 1976, c. 30, s. 4.

**SECTION 99B**

(3) The Senior Master shall have general supervision and direction over the administration of the offices of the masters and arranging and assigning masters for hearings as circumstances require. 1976, c. 30, s. 4.

NOTES

Section 85(1), (2), (3)  
(4)

Section 99c(1), (2), (3)  
(4)

no change  
change in form

**Section 85**

(1) The Lieutenant Governor in Council may make regulations,

- (a) fixing the remuneration of masters; and
- (b) providing for the benefits to which masters are entitled, including,
  - (i) leave of absence and vacations;
  - (ii) sick leave credits and payments in respect of such credits;
  - (iii) pension benefits for masters and their widows and surviving children, and for the transfer or other disposition of benefits in respect thereof to which persons appointed as masters under this Act were entitled under *The Public Service Act* or *The Public Service Superannuation Act* at the time of their appointment under this Act.

(2) Subject to subsection (3), unless authorized by the Lieutenant Governor in Council, a master shall not practise or actively engage in any business, trade or occupation, but shall devote his whole time to the performance of his duties as a master.

(3) A master, with the previous consent of the Attorney General, may act as arbitrator or conciliator.

(4) *The Public Authorities Protection Act* applies to masters in the same manner and to the same extent as it applies to justices of the peace, without limiting any other defences available to such officers under the law in respect of acts done in the execution of their duties.

**Section 99c**

**99c.**—(1) The Lieutenant Governor in Council may make regulations,
 

- (a) fixing the remuneration of masters;
- (b) providing for the benefits to which masters are entitled, including,
  - (i) leave of absence and vacations,
  - (ii) sick leave credits and payments in respect of such credits,
  - (iii) pension benefits for masters and their widows and surviving children,

 and for the transfer or other disposition of benefits in respect thereof to which persons appointed as masters under this Act were entitled under *The Public Service Act* or *The Public Service Superannuation Act* at the time of their appointment under this Act.

(2) Subject to subsection 3, unless authorized by the Lieutenant Governor in Council, a master shall not practise or actively engage in any business, trade or occupation but shall devote his whole time to the performance of his duties as a master.

(3) A master, with the previous consent of the Attorney General, may act as arbitrator or conciliator.

(4) *The Public Authorities Protection Act* applies to masters in the same manner and to the same extent as it applies to justices of the peace, without limiting any other defences available to masters under the law in respect of acts done in the execution of their duties. 1976, c. 30, s. 4.

NOTES

Section 86(1), (2)	Section 99d(1), (3)	no change
Section 87(1), (2), (3), (4)	- Rule 759	new change in form

**Section 86**

- (1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint such local masters as are considered necessary.
- (2) In the absence or inability to act of a local master appointed under subsection (1), the county court judge may perform the duties and exercise the powers of the local master.

**TAXING OFFICERS****Section 87**

- (1) Every master is ex officio a taxing officer, and every local master who is not a county court judge, local registrar and deputy local registrar is ex officio a local taxing officer.
- (2) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint such additional taxing officers and local taxing officers as are considered necessary.
- (3) The Senior Master shall have general supervision and direction over the administration of the offices of all taxing officers and local taxing officers.
- (4) Every taxing officer, for the purpose of taxing costs, shall have the power to administer oaths, take evidence, direct production of documents and give general directions for the conduct of any taxation before him.

**Section 99d**

99d.—(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint such local masters as are considered necessary.

(3) In the absence or inability to act of a local master appointed under subsection 1, the county court Judge may perform the duties and exercise the powers of the local master. 1975, c. 30, s. 4.

**Rule 759**

759. All taxing officers, for the purpose of any taxation, have power to administer oaths and take evidence, direct production of books and documents, make certificates and give general directions for the conduct of taxations before them.

NOTES

Section 88(1)	-	new
(2)	Section 100	change
Section 89(1), (2)	Section 101(1), (2)	change in form

**LOCAL REGISTRARS****Section 88**

(1) The Registrar of the Supreme Court shall have general supervision and direction over every local registrar.

(2) Unless another person is appointed, the clerk of the county court is ex officio local registrar for his county.

**COURT REPORTERS****Section 89**

(1) Every court reporter is an officer of the court to which he is appointed, and shall perform such duties as are assigned to him by the Lieutenant Governor in Council or by the rules.

(2) Every court reporter shall take and subscribe the following oath before a judge of the court to which he is appointed, and the oath shall be filed with the local registrar or county court clerk, as the case may be:

*I, ..... , solemnly and sincerely promise and swear that I will faithfully report the evidence and proceedings in each case in which I act as court reporter. So help me God.*

**Section 100**

100. Unless another person is appointed, the clerk of the district court is ex officio local registrar for his district. R.S.O. 1960, c. 197, s. 97.

**STENOGRAPHIC REPORTERS****Section 101**

101.—(1) The stenographic reporters are officers of the court to which they are appointed, and shall perform such other duties as are assigned to them by the Lieutenant Governor in Council or by the rules.

(2) Every such reporter shall take and subscribe the following oath before a judge of the court to which he is appointed, and the oath shall be filed with the proper officer of that court:

*I, ..... , solemnly and sincerely promise and swear that I will faithfully report the evidence and proceedings in each case in which I act as stenographic reporter. So help me God.*

R.S.O. 1960, c. 197, s. 98.

NOTES**Section 90(1)**

(2), (3)

**Section 91****Section 118(1)**

(2), (3)

**Section 119****change****change in form****change in form****LOCAL JUDGES OF THE HIGH COURT****Section 90**

(1) Every judge of a county court is a local judge of the High Court for the purposes of his jurisdiction in actions in the Supreme Court and may be styled a local judge of the Supreme Court and may exercise all such power and authority in all proceedings in the Supreme Court as he is, by statute or the rules empowered to do.

(2) Where a county court judge is authorized to exercise jurisdiction in a county other than the county for which he is appointed, he has, while exercising jurisdiction in such county, the same power and authority as a local judge of the High Court as though he were a judge of the county court of such county.

(3) Without limiting the generality of subsections (1) and (2), the jurisdiction of a local judge of the High Court extends to the exercising of all such power and authority as may be exercised by the Supreme Court or a judge thereof under the *Divorce Act (Canada)*, and where a claim for any other relief is joined with a petition for divorce, a local judge of the High Court has the same power and authority to deal with such claim as may be exercised by the Supreme Court or a judge thereof.

**SHERIFFS, ETC.****Section 91**

Every sheriff, deputy sheriff, jailer, constable and other peace officer shall aid, assist and obey the court and the judges thereof in the exercise of the jurisdiction conferred by this Act, and otherwise, whenever by the rules or by an order of the court or of a judge he is required to do so.

**Section 118**

118.—(1) Every judge of a county court is a local judge of the High Court for the purposes of his jurisdiction in actions in the Supreme Court, and may be styled a local judge of the Supreme Court, and has, in all causes and actions in the Supreme Court, subject to the rules, power and authority to do and perform all such acts and transact all such business in respect of matters and causes in or before the High Court as he is by statute or the rules empowered to do and perform. R.S.O. 1960, c. 197, s. 116(1); 1970, c. 97, s. 111(1).

(2) Where a county court judge is authorized to exercise jurisdiction in a county other than the county for which he is appointed, he has, while exercising jurisdiction in such county, the like power as a local judge of the High Court as though he were a judge of the county court of such county. R.S.O. 1960, c. 197, s. 115(2).

(3) Without limiting the generality of subsections 1 and 2, the jurisdiction of the local judges of the High Court extends to the exercising of all such powers and authorities and the performing of such acts and the transacting of all such business as may be exercised, performed or transacted by the Supreme Court of a judge thereof under the *Divorce Act (Canada)* and where a claim for other relief is joined in a petition for divorce, the local judges of the High Court have the same jurisdiction and authorities to deal with such claim as may be exercised by the Supreme Court or a judge thereof. 1970, c. 97, s. 112(2); 1976, c. 30, s. 7; 1978, c. 81(3).

**Section 119**

119. Sheriffs, deputy sheriffs, jailers, constables and other peace officers, shall aid, assist and obey the court and the judges thereof in the exercise of the jurisdiction conferred by this Act, and otherwise, whenever by the rules or by the order of the court or of a judge required so to do. R.S.O. 1960, c. 197, s. 116.

NOTES

Section 92(1), (2), (3)	Section 102(1), (2), (3)	change in form
(4)	(7)	change
(5)	(6)	change
(6)	-	new

**OFFICIAL EXAMINERS****Section 92**

(1) Every local registrar of the Supreme Court, deputy registrar and clerk of the county court is ex officio an official examiner for the county for which he is appointed.

(2) The Lieutenant Governor in Council may appoint such additional official examiners as are considered necessary.

(3) An official examiner shall not solicit any party, solicitor or other person to have an official examination taken before him, nor shall any one do so on his behalf with his knowledge or assent, on pain of forfeiture of office.

(4) With the prior approval of the Attorney General, every official examiner may, by writing, appoint a deputy who may perform all the duties required to be performed by the official examiner making the appointment, and the appointment shall be kept on file in his office.

(5) In the event of the death, suspension, resignation, retirement or removal of an official examiner, the deputy official examiner is the official examiner until the suspension is terminated or another person has been appointed and has assumed the duties of such officer.

(6) In the absence of a deputy, the Attorney General may appoint a temporary deputy.

**Section 102**

102.—(1) Every local registrar, deputy registrar and clerk of the county court is ex officio a special examiner for the county for which he is appointed. R.S.O. 1960, c. 197, s. 100(1).

(2) The Lieutenant Governor in Council may appoint additional special examiners. 1968, c. 59, s. 4.

(3) There shall be at least four special examiners in Toronto.

(6) Where it appears to the Lieutenant Governor in Council that a local registrar, a deputy registrar, or a clerk of a county court, elsewhere than in Toronto, is infirm or ill, or is otherwise unable or unfit to act personally as special examiner, or if he is absent on leave, the Lieutenant Governor in Council may appoint the stenographic reporter for the county court, or some other person to act temporarily or otherwise as such special examiner in his stead.

(7) In case of the absence on leave or illness of any other special examiner he may, with the approval of the Chief Justice of Ontario, appoint a deputy to act for him during such absence or illness. R.S.O. 1960, c. 197, s. 100(3-7).

NOTES

Section 93(1), (2)

Section 105(1), (2)

change

### INSPECTOR OF LEGAL OFFICES

#### **Section 93**

(1) The Lieutenant Governor in Council may appoint an officer to be called the Inspector of Legal Offices to inspect all court offices and such other offices connected with the administration of justice as the Lieutenant Governor in Council may direct.

(2) The Lieutenant Governor in Council may appoint an Assistant Inspector of Legal Offices and, in the absence of the Inspector or if the office of Inspector is vacant or if directed by the Inspector, the Assistant Inspector of Legal Offices has the powers and may perform the duties of the Inspector under this or any other Act.

#### **Section 105**

105.—(1) The Lieutenant Governor in Council may appoint an officer, to be called the Inspector of Legal Offices, to inspect the offices of the Supreme Court, of local courts, of Crown attorneys, and such other offices connected with the administration of justice as the Lieutenant Governor in Council may direct. R.S.O. 1960, c. 197, s. 103.

(2) The Lieutenant Governor in Council may appoint a barrister or solicitor to be the Assistant Inspector of Legal Offices, and, in the absence of the Inspector or if the office of Inspector is vacant or if directed by the Inspector, the Assistant Inspector of Legal Offices has the powers and may perform the duties of the Inspector under this or any other Act. 1962-63, c. 124, s. 47.

NOTES

Section 94(1), (2), (3)

Section 106(2), (3), (4)

change

**Section 94**

(1) The Inspector may inquire into the conduct of any officer, other than a master or local master, in relation to his official duties or acts. He may require such officer or any other person to give evidence before him on oath, and for that purpose he has the same power to summon the officer or other person to attend as a witness, to enforce his attendance and to compel him to produce books and documents and to give evidence, as any court has in civil cases.

(2) Any officer, other than a master or local master, shall, when and as often as required by the Inspector, produce for examination and inspection all books and documents that are required to be kept by them and shall report to the Inspector all such matters relating to any cause or proceeding as the Inspector requires.

(3) Where books, documents, papers or other material have been preserved in the Supreme Court or in a county or surrogate court for so long that it appears they need not be preserved any longer, an order authorizing the Inspector to cause their destruction or other disposition may be made,

(a) in the Supreme Court by the Chief Justice of Ontario; and

(b) in a county or surrogate court, by the Chief Judge of the County and District Courts.

**Section 106**

(2) Where the Inspector has occasion to inquire into the conduct of any officer other than a master in relation to his official duties or acts, he may require the officer or any other person to give evidence before him on oath, and for that purpose he has the same power to summon the officer or other person to attend as a witness, to enforce his attendance and to compel him to produce books and documents and to give evidence, as any court has in civil cases.

(3) The officers shall, when and as often as required by the Inspector, produce for examination and inspection all books and documents that are required to be kept by them, and shall report to the Inspector all such matters relating to any cause or proceeding as the Inspector requires. R.S.O. 1960, c. 197, s. 104(1-3); 1975, c. 30, s. 6(1) and (2).

(4) Where books, documents, papers or other material have been preserved in the Supreme Court or in a county or district court for so long that it appears they need not be preserved any longer, an order authorizing the Inspector to cause their destruction or other disposition may be made,

(a) in the Supreme Court by the Chief Justice of Ontario; and  
 (b) in other courts, by the Chief Judge of the County and District Courts. 1968, c. 59, s. 5.

NOTES

Section 95(1)	Section 107(1)	change
(2)	(9)	change
(3)	(9)	change
(4)	(10)	change
(5)	(2)	change
(6)	-	new

**OFFICIAL GUARDIAN****Section 95**

(1) The Lieutenant Governor in Council shall appoint a barrister and solicitor of Ontario of not less than ten years standing to be the Official Guardian.

(2) The Lieutenant Governor in Council may appoint one or two similarly qualified persons to act as Deputy Official Guardian, and each Deputy shall have all the powers and may perform any of the duties of the Official Guardian.

(3) In the case of the illness or absence of the Official Guardian, the senior Deputy Official Guardian shall act as Official Guardian and, if the office of the Official Guardian becomes vacant, the senior Deputy Official Guardian shall act as Official Guardian until an Official Guardian is appointed, unless the Attorney General otherwise directs.

(4) In the case of the illness or absence of the Official Guardian or if the office of the Official Guardian becomes vacant and no Deputy has been appointed, the Attorney General is ex officio Official Guardian until another appointment is made.

(5) The Official Guardian shall represent and protect the rights, interests and welfare of minors, and any other persons under disability, and shall act as litigation guardian for minors and other persons under disability, in accordance with any Act, the rules or any order of a court or judge.

(6) The Official Guardian is entitled to obtain all records and information a parent, guardian or next of kin may obtain.

**Section 107**

107.—(1) No person shall be appointed Official Guardian unless he is a barrister and solicitor of Ontario of not less than ten years standing. R.S.O. 1960, c. 197, s. 105(1).

(2) The Official Guardian shall be the guardian ad litem or next friend of infants and other persons in accordance with any Act or the rules or an order of a court or judge. 1960-61, c. 41, s. 2.

(9) The Lieutenant Governor in Council may appoint one or two persons to act as the deputy or the deputies, as the case may be, of the Official Guardian during his absence or illness, and while so acting each such deputy has all the powers and may perform any of the duties of the Official Guardian. 1965, c. 51, s. 4.

(10) If the office of Official Guardian becomes vacant, the Minister of the Attorney General is ex officio Official Guardian until another appointment is made. 1965, c. 51, s. 4.

NOTES

(7)	Section 107(15)	change
(8)	(3)	change
(9)	(11)	change
(10)	(12)	no change
(11)	(13)	change

## SECTION 95 CONTINUED

(7) The Official Guardian shall not be required to give security for costs in any proceeding, nor shall he be liable to be examined for discovery in any proceeding in which he is acting as litigation guardian, but he shall disclose and produce for inspection any relevant document in his possession, custody or control which is not privileged.

(8) The same costs as are payable to counsel and solicitors are payable to the Official Guardian and, unless otherwise ordered, he is entitled to his costs in any event of the cause.

(9) The Official Guardian may act as solicitor or counsel in the discharge of his duties and responsibilities, or he may retain another solicitor or counsel to represent him in any proceeding.

(10) The Provincial Auditor shall examine and report upon the accounts and financial transactions of the Official Guardian.

(11) Unless the Lieutenant Governor in Council otherwise directs, the Official Guardian or a Deputy Official Guardian shall not directly or indirectly practise the profession of law or act as a notary public or do any conveyancing or prepare any paper or document to be used in any court in Ontario except in the discharge of his duties as Official Guardian or of a duty that is assigned to him under this or any other Act.

## Section 107—(Continued)

(3) The same costs as are payable to counsel and solicitors are payable to the Official Guardian, but all costs paid to him shall be entered in his books of account or may be paid into court to the credit of an account entitled "Account of the Official Guardian".

(11) The Official Guardian may retain solicitors out of Toronto as agents for the purpose of any proceeding being carried on out of Toronto, and a solicitor so retained is entitled to the same costs for the work actually done by him as the Official Guardian would have been entitled to if the work had been done by him, and such costs shall be paid to the Official Guardian and the agent's fees and disbursements shall be paid by the Official Guardian and shall be deemed a disbursement of the Official Guardian. R.S.O. 1960, c. 197, s. 105(11).

(12) The Provincial Auditor shall examine and report upon the accounts and financial transactions of the Official Guardian. 1967, c. 41, s. 2.

(13) If the Lieutenant Governor in Council so directs, the Official Guardian shall not directly or indirectly practise the profession of the law as counsel or solicitor or act as a notary public or conveyancer or do any matter of conveyancing or prepare any paper or document to be used in any court in Ontario except in the discharge of his duties as Official Guardian or of a duty that is assigned to him under this Act.

(15) Unless otherwise ordered by the court or a judge, the Official Guardian shall not be required to give security for the cost of any proceeding.

NOTES

(12)	Rule 724	change in form
(13)	Rule 737(1)	change in form
(14)	Rule 737(2)	change
(15)	Rule 737(6)	change

## SECTION 95 CONTINUED

(12) It is the duty of the Official Guardian to see that,

- (a) moneys payable on mortgages held by the Accountant, in which persons for whom the Official Guardian has acted are interested, are promptly paid;
- (b) the mortgaged premises are kept properly insured; and
- (c) the taxes thereon are duly paid.

(13) The Official Guardian shall deposit in the Accountant's office a statement showing the distribution of the proceeds of lands sold or mortgaged with his approval under *The Devolution of Estates Act* and the dates of births of minors interested.

(14) All money received by the Official Guardian on behalf of any person for whom he acts shall, unless otherwise ordered, be paid into court to the credit of the person entitled.

(15) Where the amount of money payable into court under this section is ascertained by the deduction of untaxed costs from a fund, the Official Guardian may require such costs to be taxed, and the solicitor who has received such costs shall forthwith pay into court for the person for whom the Official Guardian acts, any balance that is found to be due as a result of such taxation.

## Rule 724

724. It is the duty of the Official Guardian to see that moneys payable on mortgages held by the Accountant, in which persons for whom the Guardian has acted are interested, are promptly paid, and that the mortgaged premises are kept properly insured, and that the taxes thereon are duly paid.

## Rule 737

737.—(1) The Official Guardian shall deposit in the Accountant's office a statement showing the distribution of the proceeds of lands sold or mortgaged with his approval under *The Devolution of Estates Act*, and the dates of births of infants interested.

(2) All money received by the Official Guardian on behalf of infants, mentally incompetent persons, absentees or other persons for whom he acts shall, without order, be paid into court to the credit of the person entitled.

(6) Where the amount of money payable into court under this rule is ascertained by the deduction of untaxed costs from a fund, the Official Guardian may require such costs to be taxed, and the solicitor who has received such costs shall forthwith pay into court for the infant or mentally incompetent person or absentee any balance that is found to be due as a result of such taxation.

NOTES

Section 96(1)	Section 108(1)	change in form
(2)	(2)	no change
(3)	(3)	change
(4)	-	new
(5)	-	new
(6)	Section 108(4)	no change

**ACCOUNTANT****Section 96**

(1) The Accountant of the Supreme Court is a corporation sole by the name of "The Accountant of the Supreme Court of Ontario", and as such corporation has perpetual succession and may sue and be sued and may plead and be impleaded in any of Her Majesty's courts.

(2) All money, mortgages, stocks, securities and property now vested in the Accountant, as such corporation sole, shall continue to be so vested in him, and all money in court and all securities in which money paid into court is invested is vested in him as such corporation sole, subject to this Act.

(3) With the prior approval of the Attorney General, the Accountant may, by writing under his hand and seal of office, appoint a Deputy who may perform all the duties required to be performed by the Accountant, and the appointment shall be kept on file in his office.

(4) In the event of the death, suspension, resignation, retirement or removal of the Accountant, the Deputy is the Accountant until the suspension is terminated or another person has been appointed and has assumed the duties of that office.

(5) In the absence of a Deputy, the Attorney General may appoint a temporary Deputy.

(6) The expenses of the Accountant's office, including all salaries, are payable out of the moneys that are appropriated therefor by the Legislature, and the Lieutenant Governor in Council may provide for payment out of the income from the funds in court.

**Section 108**

108.—(1) The Accountant of the Supreme Court is a corporation sole by the name of "The Accountant of the Supreme Court of Ontario", and as such corporation sole has perpetual succession and may sue and be sued and may plead and be impleaded in any of Her Majesty's courts.

(2) All money, mortgages, stocks, securities and property now vested

In the Accountant, as such corporation sole, shall continue to be so vested in him, and all money in court and all securities in which money paid into court is invested is vested in him as such corporation sole, subject to this Act.

(3) Where there is a vacancy in the office of Accountant, such officer or person as is directed by the rules to perform the duties of the office shall be deemed to be and have all the powers of the Accountant.

(4) The expenses of the Accountant's office, including all salaries, are payable out of the moneys that are appropriated therefor by the Legislature, and the Lieutenant Governor in Council may provide for payment out of the income from the funds in court. R.S.O. 1960, c. I97, s. 106.

NOTES

(7)	Rule 725(1)	change
(8)	Rule 725(2)	change

## SECTION 9E CONTINUED

(7) All mortgages and other securities taken under an order or judgment of the court and all bonds and other instruments required by the practice of the court for the purpose of security, except security for costs, shall be taken in the name of the Accountant and shall be deposited in his office, unless otherwise ordered.

(8) Mortgages and other securities made to or vested in the Accountant in any proceeding shall be held by him subject to any order of the court, but no duty or liability, except as custodian of the instrument, shall be imposed on the Accountant in respect of such mortgage or security or any property thereby vested in him.

## Rule 725

725.—(1) All mortgages and other securities taken under an order or judgment of the court and all bonds and other instruments required by the practice of the court for the purpose of security, except security for costs, shall, unless otherwise ordered, be taken in the name of the Accountant, and shall be deposited in his office.

(2) Mortgages and other securities made to or vested in the Accountant in any action or matter shall be held by him subject to the order of the court, but no duty or liability, except as custodian of the instrument, shall, by reason of such mortgage or other security being made, given to or vested in him, be imposed on the Accountant in respect of such mortgage or security or any property thereby vested in him.

NOTES

Section 97(1), (2), (3)	Section 109(1), (2), (3)	no change
(4), (5),	(4), (5)	
(6)	(7)	

**INVESTMENT OF COURT FUNDS****Section 97**

(1) The finance committee shall continue to be composed of three persons who shall be appointed by and hold office during the pleasure of the Lieutenant Governor in Council and, notwithstanding this or any other Act, the finance committee has the control and management of the money in court and the securities in which it is invested and the investment of such money.

(2) The finance committee may provide for the payment of interest upon any money paid into court and may fix the rate of interest so paid.

(3) The finance committee may establish such reserve funds as it considers expedient in the management of the money in court.

(4) Money paid into court shall be invested in the name of The Accountant of the Supreme Court of Ontario.

(5) Any money that is available for investment shall be invested in investments in which the Treasurer of Ontario and Minister of Treasury, Economics and Intergovernmental Affairs may invest public money under Section 12 of *The Financial Administration Act*.

(6) The finance committee may employ a trust company to make the investments of money paid into court or as custodian of the securities representing investments of the money, on such terms and conditions as are agreed.

**Section 109**

109.—(1) The finance committee shall continue to be composed of three persons who shall be appointed by and hold office during the pleasure of the Lieutenant Governor in Council, and, notwithstanding this or any other Act, the finance committee has the control and management of the money in court and the securities in which it is invested and the investment of such money.

(2) The finance committee may provide for the payment of interest upon any money paid into court and may fix the rate of interest so paid.

(3) The finance committee may establish such reserve funds as it considers expedient in the management of the money in court.

(4) Money paid into court shall be invested in the name of The Accountant of the Supreme Court of Ontario, R.S.O. 1960, c. 197, s. 107(t-4).

(5) Any money that is available for investment shall be invested in investments in which the Treasurer of Ontario and Minister of Treasury, Economics and Intergovernmental Affairs may invest public money under s. 12 of *The Financial Administration Act*, 1970, c. 5, s. 2; 1976 (2nd Sess.), c. t, s. 1.

(7) The finance committee may employ a trust company to make the investments of money paid into court or as custodian of the securities representing investments of the money, on such terms and conditions as are agreed.

NOTES

Section 98	Section 110	no change
Section 99	Section 111	no change
Section 100	Section 113	no change

**Section 98**

All money, securities, effects and real or personal property vested in or held by the Accountant or by the Official Guardian shall be deemed to be vested in them in trust for Her Majesty, but may, nevertheless, be paid out, sold, disposed of, assigned, conveyed or dealt with in accordance with any statute or the rules, or with any judgment or order of the court, or order of the Lieutenant Governor in Council.

**Section 99**

Where persons who are subjects of a foreign country having a consul in Canada authorized to act as the official representative of such subjects are entitled to moneys that have been paid into court or that are in the hands of an executor or administrator, the moneys may be paid to the consul.

**Section 100**

The Provincial Auditor shall examine and report upon accounts and financial transactions of The Accountant of the Supreme Court of Ontario.

**Section 110**

110. All money, securities, effects and real or personal property vested in or held by the Accountant or by the Official Guardian shall be deemed to be vested in them in trust for Her Majesty, but may, nevertheless, be paid out, sold, disposed of, assigned, conveyed or dealt with in accordance with any statute or the rules, or with any judgment, or order of court, or order of the Lieutenant Governor in Council. R.S.O. 1960, c. 197, s. 108.

**Section 111**

111. Where persons who are subjects of a foreign country having a consul in Canada authorized to act as the official representative of such subjects are entitled to moneys that have been paid into court or that are in the hands of an executor or administrator, the moneys may be paid to the consul. R.S.O. 1960, c. 197, s. 109.

**Section 113**

113. The Provincial Auditor shall examine and report upon the accounts and financial transactions of The Accountant of the Supreme Court of Ontario. 1967, c. 41, s. 3.

NOTES

Section 101(1), (2), (3)	Section 126(1), (2), (4)	change
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**ACCESS TO BOOKS****Section 101**

(1) Any person, upon payment of the prescribed fee, shall have access to, and is entitled to inspect the books of the Supreme Court and of the county courts, containing records or entries of any originating process issued, judgments entered, and chattel mortgages and bills of sale registered, and no person desiring such access or inspection shall be required, as a condition of his right thereto, to furnish the names of the parties or the style of the proceedings in respect of which the access or inspection is sought.

(2) Any officer having the charge or custody of any such book shall, upon payment of the prescribed fee, produce for inspection any originating process or copy thereof so issued, and any judgment roll, or any chattel mortgage or bill of sale so registered in his office, or of which records or entries are by law required to be kept in such book.

(3) Any person affected by any document in any court is entitled, upon payment of the prescribed fee, to obtain an authenticated or certified copy thereof from the officer having custody of such document.

**Section 126**

126.—(1) Every person shall have access to and is entitled to inspect the books of the Supreme Court and of the county courts, containing records or entries of the writs issued, judgments entered, and chattel mortgages and bills of sale registered, and no person desiring such access or inspection shall be required, as a condition of his right thereto, to furnish the names of the parties or the style of the causes or matters in respect of which the access or inspection is sought.

(2) Every officer having the charge or custody of any such book shall upon request produce for inspection any writ of summons or copy thereof so issued, and any judgment roll, or any chattel mortgage or bill of sale so registered in his office or of which records or entries are by law required to be kept in such book.

(4) A person affected by any record in any court, whether it concerns the Queen or other person, is entitled, upon payment of the proper fee, to search and examine it and to have an exemplification or a certified copy thereof made and delivered to him by the proper officer. R.S.O. 1960, c. 197, s. 123.

NOTES

Section 102	Section 121	change
Section 103	Section 120	no change
Section 104(1), (2)	-	new
Section 105	-	new

**OATHS AND AFFIDAVITS****Section 102**

Every officer of the Supreme Court has, in any proceeding in his court, power to administer oaths and to examine parties and witnesses.

**PRISONS OF THE COURT****Section 103**

All correctional institutions in Ontario are prisons of the court.

**Section 121**

121. Every officer of the Supreme Court has, for the purposes of any proceeding before him, power to administer oaths and to examine parties and witnesses. R.S.O. 1960, c. 197, s. 118.

**Section 120**

120. All correctional institutions in Ontario are prisons of the court. R.S.O. 1960, c. 197, s. 117.

**TRANSITIONAL PROVISIONS****Section 104**

(1) On the coming into force of this Act, all proceedings, whenever commenced, shall be governed by this Act and the Rules of Civil Procedure, unless the court otherwise orders.

(2) The court may order that a proceeding, or any step therein, be continued and concluded under *The Judicature Act, R.S.O. 1970*, as amended, and the Rules in force at the time the proceeding was commenced.

**Section 105**

This Act shall come into force on the ..... day of ..... , 19 ..

COMPARISON OF  
PROPOSED RULES OF CIVIL PROCEDURE  
WITH  
RULES OF PRACTICE, R.R.O. 1970, REG. 545  
AS AMENDED TO FEBRUARY 29, 1980  
AS WELL AS CERTAIN OF THE  
SECTIONS OF THE JUDIACTURE ACT, R.S.O. 1970

OCTOBER 1980

COMPARISON OF THE PROPOSED RULES OF CIVIL PROCEDURE TO THE CURRENT RULES ACCORDING TO THE TABLES OF CONCORDANCE. ON THE BASIS OF THESE TABLES IT WOULD APPEAR THAT THE FOLLOWING RULES HAVE BEEN OMITTED.

<u>RULE</u>	<u>RULE</u>	<u>RULE</u>	<u>RULE</u>
7 BUT SEE 4.04; 18.02(2)	71 BUT SEE 5.01	206	289 BUT SEE FORM 53 A
9	72 BUT SEE 5.01	233	303
26	88	236 BUT SEE 16.04 38.11	305
27 BUT SEE 16.07 (3)	101	237 (4)	306 a
31	105 BUT SEE 8.03	237 (5)	310
33	108	240	318 a
37	133	241	367 (2)
40	157	242	36R (1) (b)
41	160 BUT SEE AMENDMENT TO LIBEL & SLANDER ACT.	243 BUT SEE 37.03; 38.03	373 (1) (c)
42 BUT SEE 22.02	163 BUT SEE 27.06 (II)	257 BUT SEE JUDICATURE ACT S. 65(2)	373 (1) (e)
48 BUT SEE 21.02	166	258 BUT SEE JUDICATURE ACT S. 65(2)	373 (1) (g)
52	171 E	261	373 (1) (h)
53 BUT SEE 21.04 (1)	189	284 BUT SEE FORM 53 A	373 (1) (j)
58 (4)	195	285 BUT SEE FORM 53 A	374
62	203	286 BUT SEE FORM 53 A; 53.04	381
70 BUT SEE 5.01	204	288 BUT SEE 53.04	395

COMPARISON- RULES WHICH APPEAR TO HAVE BEEN OMITTED. (CONTINUED)

RULE	RULE	RULE	RULE
396	455	518	634
397	456	536	648
398	457	539	649
399	458	542	651
404	466 (1) (b)	551	652
426	468	555	653
427	471	558	654
428	473 (2)	559	655
429	473 (6) BUT SEE 21.04(2)	560	657
432 BUT SEE 57.02(18) (II)	491	562	658
437	497 b (3)	567 (3)	666
440 BUT SEE 18.05	500	574	673
447	501 (3)	608 BUT SEE 38.06	675
452	501 (7)	609 BUT SEE 38.06	680
453	501 (8)	614	681
454	516 (1)	621	682

COMPARISON - RULES WHICH APPEAR TO HAVE BEEN OMITTED ( CONTINUED )

RULE	RULE	RULE
697 BUT SEE 68.01	756 BUT SEE JUDICATURE ACT S. 88 (1)	783 (2)
698	757 BUT SEE JUDICATURE ACT S. 87 (1)	783 (4)
714	758 BUT SEE 59.08 (2)	785 (2)
718	760 (5)	789
719	761	795 (4)
722	762 BUT SEE JUDICATURE ACT S. 87 (1)	795 (5)
723	764	797 (2)
727	765	798
732 a	766 BUT SEE 1.05	798 a
737 (4)	767	799 (4)
737 (5) BUT SEE 75.02 (4)	772 (2)	802
739	772 (3)	805 (2)
741 (2)	773	811
741 (4)	774	814
741 (5)	775	815
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# RULES OF CIVIL PROCEDURE

# SUPREME COURT OF ONTARIO RULES OF PRACTICE

R.R.O. 1970, Reg. 545  
as amended to February 29, 1980

## THE RULES OF PRACTICE

comparison

New Rule

Old Rule

NOTES

1	1.02	Rule 770
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**PRELIMINARY MATTERS****RULE 1 CITATION, APPLICATION AND INTERPRETATION****1.01 Citation**

These rules may be cited as the Ontario Rules of Civil Procedure.

**1.02 Application**

These rules apply to all civil proceedings in the Supreme Court of Ontario and in the County and District Courts of Ontario unless by, or pursuant to, any statute some other procedure is provided.

**1.03 Interpretation**

(1) *The Interpretation Act* and the interpretation section of *The Judicature Act* apply to these rules, except where these rules provide a different definition or a contrary intention appears.

(2) These rules shall be liberally construed to secure the just, least expensive and most expeditious determination of every civil proceeding on its merits.

(3) As to all matters not provided for in these rules, the practice shall be regulated by analogy thereto.

(4) The arrangement of these rules and their title headings are primarily intended for convenience, but may be used to assist in their interpretation.

**Rule 770**

770. These rules and the practice and procedure in actions in the Supreme Court shall, so far as the same can be applied, apply and extend to actions in the county court.

**Rule 1**

1. As to all matters not provided for in these rules, the practice shall be regulated by analogy thereto.

**Rule 3**

3. The division of these rules into titles and headings is for convenience only, and does not affect their construction.

NOTES

## \* 1.04 Definitions

- In these rules, unless the context otherwise requires,
- action* includes any proceeding other than an application;
- appellate court* means the Court of Appeal or the Divisional Court, as the case may be;
- application* means an originating application commenced by a Notice of Application;
- court* means the Supreme Court of Ontario or a county court, as the case may be, in which the proceeding is pending;
- defendant* means a person against whom an action is commenced and includes a defendant by counterclaim;
- deliver* or *delivery* means the serving and filing of a document with proof of service; except in the case of an originating process, in which case it means the issuing and serving thereof;
- examination for discovery* includes an examination by written questions and answers;
- holiday* means a Saturday, Sunday and any day that is a holiday for civil servants as prescribed by the regulations under *The Public Service Act*;

## Rule 2

## 2. In these rules,

- (a) "Accountant" means "The Accountant of the Supreme Court of Ontario";
- (b) "action" includes garnishment proceedings, proceedings for relief by interpleader and matrimonial cause proceedings;
- (bb) "appellate court" means the Court of Appeal or the Divisional Court, as the case may be, to which an appeal is brought;
- (bbb) "conduct money" includes fees payable to witnesses according to the applicable tariff;
- (c) "county court" includes district court, and "county" includes "district";
- (d) "defendant" includes a respondent named in a petition or counter-petition for divorce;
- (e) "entry" or "entered" or any term of like import includes recording by photographic plate, micro-photographic film or photocopy negative;

## \* Rule 142

142. Every pleading shall be filed, and served upon all parties concerned therewith, and shall be marked on the face with the date of filing, and with the title of the action, the description of the pleading, and the name and place of business of the solicitor of the party filing it, or the name and address of the party filing it if he does not act by a solicitor.

NOTESCONTINUED

*judge* means a judge of the court in which the proceeding is pending but, in a Supreme Court proceeding, does not include a local judge;

*judgment* includes an order;

*local judge* means a local judge of the High Court of Justice for Ontario;

*motion* means an interlocutory motion in a proceeding;

*originating process* means a document by which any proceeding may be commenced under these rules, and includes a Statement of Claim, a Notice of Action, a Notice of Application, a counterclaim against an added defendant by counterclaim and a Third Party Claim, but does not include a counterclaim against a plaintiff only, a cross-claim or a Notice of Motion;

*plaintiff* means a person who commences an action and includes a plaintiff by counterclaim;

*proceeding* includes an action and an application;

*Registrar* means the Registrar of the Supreme Court;

*registrar* includes the Registrar, a local registrar of the Supreme Court and the Clerk of a county court;

*regulation* means a regulation as defined by *The Regulations Act*;

*statute* includes a statute passed by the Parliament of Canada.

- (f) "ground for divorce" means a ground for divorce under the Divorce Act (Canada);
- (g) "hearing" includes the trial of a matrimonial cause;
- (h) "judge" means a judge of the High Court except in rules 776 to 815, inclusive, and in the application of any other rules to matrimonial causes where "judge" shall include, on and after the 1st day of July, 1971, unless otherwise expressly provided, a local judge of the Supreme Court who has been appointed a local judge of the High Court of Justice for Ontario by the Governor General.
- (i) "Judgment" includes a decree in a matrimonial cause and, in rules 540 to 606, also includes an order to the same effect as a judgment;
- (j) "Judgment creditor" means the party or person who is entitled to receive payment or to enforce a judgment or order;
- (k) "Judgment debtor" means the party or person to make payment under a judgment or order, or against whom the judgment or order may be enforced;
- (l) In the rules relating to references, "Master" includes an assistant master or clerk to whom the matter has been assigned either by the Master or by the judgment;
- (m) "matrimonial cause" means a proceeding by petition under the Divorce Act (Canada);
- (n) "matrimonial offence" means an act or circumstance the commission or existence of which is a ground for divorce under section 3 of the Divorce Act (Canada);
- (o) "plaintiff" includes a petitioner or counter-petitioner for divorce;
- (p) "sheriff" includes any officer charged with the execution of a writ or process;
- (q) "time prescribed" means time limited or appointed by the rules or by a judgment or order;
- (r) "trial" includes the hearing of a matrimonial cause;
- (s) In rule 7 and rules 12 to 31, the words "writ of summons" and "writ" include a notice of petition for divorce and any document by which proceedings are commenced, and also include all proceedings by which a person not a party is added as a party either before or after judgment (e.g., proceedings in the Master's office and garnishment and third party proceedings);
- (t) "writ of execution" and "execution" include all writs by which a judgment may be enforced, and, in the rules relating to interpleader, also include an order of attachment under The Ascending Debtors Act. (Amended U.R. Regn. 284/71, s. 2; 115/73, s. 1; 36/73, s. 1(a) and (b); 569/75, s. 1.)

NOTES

1.05

Rule 817

2

2.02

Rules 185; 186

2.03

Rule 187

**1.05 Forms**

The forms prescribed in the Appendix of Forms hereto shall be used, where applicable, with such variations as the circumstances of the particular proceeding may require.

Rule 817

817.—(1) The forms contained in the Appendix hereto shall be used with such variations or modifications as circumstances may require, and any variance therefrom, not being in matter of substance, does not affect their regularity.

(2) The provisions contained in the form prescribed shall be deemed to be authorized by these rules.

**RULE 2 NON-COMPLIANCE WITH THE RULES**

**2.01 Waiver of Compliance by the Court**

In any particular proceeding, the court may at any time waive compliance with any rule, unless the rule expressly or by necessary implication otherwise provides.

Rule 185

185. A proceeding shall not be defeated by any formal objection, but all necessary amendments shall be made, upon proper terms as to costs and otherwise, to secure the advancement of justice, the determining of the real matter in dispute, and the giving of judgment according to the very right and justice of the case.

[All cases which might be included under this Rule have been gathered under Rule 132.—Ed.]

**2.02 Effect of Non-Compliance**

Any procedural defect, including the failure to comply with these rules or with the procedure prescribed by any statute for the conduct of any proceeding, shall be treated as an irregularity and shall not render the proceeding a nullity, and all necessary amendments or other relief shall be granted at any stage in the proceeding, upon proper terms, to secure the just determination of the real matters in dispute between the parties. In particular, the court shall not set aside any originating process on the ground that the proceeding was required to be commenced by an originating process other than the one employed.

Rule 186

186. Non-compliance with the rules does not render the writ or any act or proceeding void, but the same may be set aside, either wholly or in part, as irregular, or may be amended, or otherwise dealt with, as seems just. [See also cases under Rule 132.—Ed.]

**2.03 Attacking the Regularity of Proceedings**

A motion to attack any proceeding for irregularity shall be made within a reasonable time, and shall not be allowed if the party applying has taken any further step in the proceeding after having knowledge of the irregularity.

Rule 187

187. An application to set aside any proceeding for irregularity shall be made within reasonable time and shall not be allowed if the party applying has taken a fresh step after knowledge of the irregularity.

3.01 (a)  
 (b)  
 (c)

Rule 175  
 Rule 174  
 Rule 176

### RULE 3 TIME

#### 3.01 Computation

Except where a contrary intention appears, in the computation of time under these rules or under any judgment of the court,

- (a) where a number of days is prescribed, they shall be reckoned exclusively of the first day and inclusively of the last day, even if they are expressed to be *clear days* or the words *at least* are used;
- (b) where a period of less than 7 days is prescribed, holidays shall not be counted;
- (c) where the time for doing any act or taking any proceeding expires on a holiday, the act or proceeding may be done or taken on the next day that is not a holiday;
- (d) service of any document, other than an originating process, made after four o'clock in the afternoon or at any time on a holiday shall be deemed to have been made on the next day that is not a holiday.

#### Rule 175

175.—(1) Where a number of days not expressed to be clear days is prescribed, they shall be reckoned exclusively of the first day and inclusively of the last day.

(2) Where the days are expressed to be clear days, or where the term "at least" is added, both days shall be excluded.

#### Rule 174

174. Where a period of less than six days is prescribed, holidays shall not be reckoned.

#### Rule 176

176. Where the time for doing any act or taking any proceeding expires on a holiday, the act or proceeding may be done or taken on the next juridical day.

## NOTES

3.02 (1)  
(2)  
(3)  
(4)  
3.03 (1)  
(2)

### 3.02 Extension or Abridgment

(1) Subject to paragraphs (2) and (3), the court may at any time, and from time to time, extend or abridge the time prescribed by any judgment, or by these rules, on such terms as may seem just. An application for extension may be made either before or after the expiration of the time prescribed.

(2) The time prescribed by any judgment granted by a judge may only be extended or abridged by a judge having co-ordinate jurisdiction.

\* (3) Where the time prescribed by these rules relates to an appeal to an appellate court, only a judge of the appropriate appellate court may make an order under paragraph (1).

\* (4) Any time prescribed by these rules for serving, filing or delivering any document may be extended or abridged by consent.

### 3.03 When Proceedings may be Heard

(1) Proceedings may be heard throughout the year, except that during July and August or from December 24th to the following January 6th, both dates inclusive, no proceeding requiring the attendance of witnesses, other than proceedings for the custody of minors, shall be heard unless all parties consent or the court otherwise orders.

(2) Except for a motion made without notice, no proceeding before a master or other officer shall be heard in the absence of the opposite party until after the expiration of 15 minutes immediately following the time appointed for the hearing thereof.

### 3.04 Court Office Hours

The offices of the court shall be open for business from 9:30 a.m. to 4:30 p.m. on every day of the year except holidays; provided, however, that the officer in charge may, either before or after those hours, permit the commencement or processing of any proceeding where a limitation period may expire or where the relief sought is of an urgent nature.

Rule 8; 178  
Rule 178  
Rule 178; 504  
Rules 177; 504  
Rule 179  
Rule 227

### Rule 8

8.—(1) The writ shall be in force for twelve months from the date thereof, including the day of such date, but, if for any sufficient reason any defendant has not been served, the writ may at any time before its expiration, by order, be renewed for twelve months, and so from time to time during the currency of the renewed writ.

(2) The writ shall be marked by the proper officer, "renewed", with the date of the order.

### Rule 178

178. The court may from time to time enlarge or abridge the time prescribed by the rules, or by an order, for doing any act or taking any proceeding, and this power may be exercised although the application is not made until after the expiration of the time prescribed.

### Rule 504

504. The time limited by rules 497 to 503 may be extended or abridged by written consent or by a Judge of the appellate court. (Amended, O. Reg. 11572, s. 8.)

### Rule 177

177. Any time prescribed may be enlarged or abridged by consent in writing, without order:

### Rule 179

179. The vacations are,

- (a) the long vacation, consisting of the months of July and August; and
- (b) the Christmas vacation, consisting of the period from the 24th day of December to the 6th day of the following January, both days inclusive.

### Rule 227

227.—(1) An attendance on a motion, or on an appointment before a master, registrar or other officer, for half an hour next immediately following the return thereof, shall be deemed a sufficient attendance, and no such motion shall be made or matter be proceeded with ex parte, before the expiry of such half-hour. (Amended, O. Reg. 520/78, s. 11.)

(2) Notwithstanding this rule, the Taxing Officer may proceed ex parte after the expiration of fifteen minutes from the time appointed. (Amended, O. Reg. 451/77, s. 2.)

### Rule 504a

504a. Any person interested in an appeal to the Court of Appeal between other parties may, by leave of the Court, the Chief Justice of Ontario or the Associate Chief Justice of Ontario, intervene therein upon such terms and conditions and with such rights and privileges as the Court, the Chief Justice or the Associate Chief Justice may determine [New, O. Reg. 933/79, s. 6.]

4.01  
4.02 (b)  
(e)

Rules 141; 190(1), (2); 193  
Rule 191(1)  
Rule 12

#### RULE 4 COURT DOCUMENTS

##### 4.01 Format

Every document in a proceeding shall be printed, typewritten, written or reproduced legibly upon one side of good quality paper of approximately 21.5 centimeters by 28 centimeters with a margin of approximately 4 centimeters upon the left-hand side. All such documents shall have a double space between lines.

##### 4.02 Contents

(1) Every document in a proceeding shall contain,

- (a) the name of the court and the court file number;
- (b) the style of cause, but in a document other than an originating process, pleading, affidavit, order, judgment, certificate, report or record, where there are more than two parties to a proceeding, the style of cause may be abbreviated to show the names of the first party on each side followed by the words *and others*;
- (c) the title of the document;
- (d) its date; and
- (e) the name and address of the party delivering the document or his solicitor, if any.

(2) Numbers, including amounts of money, shall be expressed in figures.

##### Rule 141

141. Every writ, pleading or other document may be printed, typewritten or written in whole or in part.

##### Rule 190

190.—(1) All writs, pleadings, affidavits, judgments, orders and other documents shall be printed, typewritten, written or reproduced legibly upon one side of good quality paper eleven inches by eight and one-half inches with a margin upon the left-hand side.

(2) All such documents shall have a single space between lines and a triple space between paragraphs except pleadings, affidavits, judgments and orders which shall have a double space between lines.

##### Rule 193

193. Where service of affidavits and other documents is required, true copies, legibly written, typewritten or printed, are to be served.

##### Rule 12

12.—(1) Where a plaintiff sues by a solicitor, the writ of summons, or notice in lieu thereof, shall be endorsed with the solicitor's name or firm and place of business, where service may be made.

(2) Where a plaintiff sues in person, there shall be endorsed upon the writ, or notice in lieu thereof, his place of residence and occupation.

(3) [Revoked, O. Reg. 307/72, s. 1.]

##### Rule 142

142. Every pleading shall be filed, and served upon all parties concerned therewith, and shall be marked on the face with the date of filing, and with the title of the action, the description of the pleading, and the name and place of business of the solicitor of the party filing it, or the name and address of the party filing it if he does not act by a solicitor.

##### Rule 192

192.—(1) In all proceedings in an action, except the writ of summons, pleadings, judgments and reports, the following short style of cause is sufficient:

"Between John Smith and others—Plaintiffs  
and  
Richard Roe and others—Defendants"

(2) In proceedings under any particular Act (e.g., The Mechanics' Lien Act), the style of cause shall be: "In the matter of (naming the statute), Between A.B., Plaintiff, and C.D., Defendant (or A.B., Applicant, and C.D., Respondent)".

NOTES

4.03(1)  
(1) (c)  
(2)

Rule 190(7), (8)  
Rule 12(1)  
Rule 12(2)

\* 4.03 Backsheet

(1) Every document in a proceeding shall have a backsheet, showing on the right-hand side,

- (a) the court file number of the proceeding;
- (b) the name of the court, the judicial district in which the proceeding was commenced and an abbreviated style of cause; and
- (c) the name, address and telephone number of the solicitor for the party delivering the document; and, if the solicitor in the proceeding acts by an agent, the name, address and telephone number of the agent.

(2) Where a party is not represented by a solicitor, the backsheet shall show the name of the party, an address for service within Ontario, and his telephone number.

Rule 190—

(7) Every document filed shall be endorsed with the short style of cause, the nature of the document, the name of the solicitor preparing or filing it, and the court file number.

(8) All documents filed in proceedings in the Supreme Court shall have endorsed thereon the name of the county or district in which the proceedings were commenced.

Rule 12

12.—(1) Where a plaintiff sues by a solicitor, the writ of summons, or notice in lieu thereof, shall be endorsed with the solicitor's name or firm and place of business, where service may be made.

(2) Where a plaintiff sues in person, there shall be endorsed upon the writ, or notice in lieu thereof, his place of residence and occupation.

\* Rule 142

142. Every pleading shall be filed, and served upon all parties concerned therewith, and shall be marked on the face with the date of filing, and with the title of the action, the description of the pleading, and the name and place of business of the solicitor of the party filing it, or the name and address of the party filing it if he does not act by a solicitor.

NOTES

4.04  
4.05  
4.06

Rule 194  
Rule 191  
Rule 190(3)

**4.04 Registrar to Issue Copies**

On the request of any person affected by any document on the file of the court, and upon payment of the prescribed fee, the registrar shall issue an authenticated or certified copy thereof.

**4.05 Notice to be in Writing**

Wherever these rules require notice to be given to anyone, such notice shall be given in writing.

**4.06 Transcripts**

All transcripts of oral evidence to be used in court proceedings shall be prepared as prescribed by regulation pursuant to *The Administration of Justice Act*.

**Rule 194**

194. Where an office copy of an order or judgment is directed to be served, it shall be certified by the officer in whose office the order or judgment is entered.

**Rule 191**

191. No notice shall be given orally.

**SECTION 190**

(3) All transcripts of evidence and examinations shall conform to the Note 7 to Item 17 of Tariff B. [Amended, O. Reg. 990/76, s. 1.]

4.07 (1) (a)  
(c)

Rule 290  
Rule 290

**4.07 Affidavits**

**(1) Format**

An affidavit used in a proceeding shall be,

- (a) expressed in the first person, and shall state the name in full, place of residence and occupation of the deponent; and, if he is a party or the solicitor, agent or employee of a party, it shall state that fact;
- (b) divided into paragraphs, numbered consecutively, with each paragraph being confined as far as possible to a particular allegation of fact; and
- (c) signed by the deponent and, when the jurat is completed, signed by the person before whom it is sworn.

**Rule 290**

290. An affidavit shall be drawn up in the first person, stating the name of the deponent in full, and his description and true place of abode, and shall be signed by him.

NOTESCONTINUED

(2) (3) (4) (5)

**(2) Contents**

Every affidavit shall be confined to the statement of facts within the personal knowledge of the deponent, except as otherwise provided in these rules.

**(3) Exhibits**

- (a) An exhibit referred to in an affidavit shall be identified by the person before whom the affidavit is sworn as the exhibit so referred to.
- (b) Where an exhibit is referred to in an affidavit as being attached or annexed to the affidavit, it shall be so attached or annexed and filed with the affidavit.
- (c) Where an exhibit is referred to in an affidavit as being produced and shown to the deponent, it shall not be attached or annexed to the affidavit or filed therewith, but shall be left with the registrar for the use of the court. Upon the disposition of the proceeding, or of the motion in the proceeding, in respect of which the affidavit was filed, any such exhibit shall be returned to the party who filed the affidavit or his solicitor, unless otherwise ordered.
- (d) A copy of every documentary exhibit referred to in an affidavit shall be served with the affidavit, unless it is impractical to do so.

**(4) By Two or More Deponents**

Where an affidavit is made by two or more deponents, there shall be a separate jurat for each deponent, unless all the deponents are sworn before the same person at the same time when the words *above-named deponents* may be used.

**\* (5) On Behalf of a Corporation**

Any affidavit may be made on behalf of a corporation by any officer, director or employee thereof.

**Rule 292**  
**Rule 298**  
**Rule 291**  
**Rule 293(1)**

**Rule 292**

292. Affidavits shall be confined to the statement of facts within the knowledge of the deponent, but, on interlocutory motions, statements as to his belief, with the grounds therefor, may be admitted.

**Rule 298**

298. Where properly marked exhibits are referred to in an affidavit filed and are not annexed thereto, such exhibits need not be filed but shall be left for the use of the court and shall be handed out on the disposal of the motion, unless otherwise ordered.

**Rule 291**

291. In an affidavit made by two or more deponents, the names of the persons making the affidavit shall be inserted in the jurat, unless the affidavit of all the deponents is taken at one time by the same officer, in which case it is sufficient to state that it was sworn by both (or all) of the "above-named" deponents.

**Rule 293**

293.—(1) In an action or proceeding to which a corporation is a party, any affidavit required by these rules to be made by a party may be made by any officer, servant or agent of the corporation having knowledge of the facts required to be deposed to, and he shall state therein that he has such knowledge.

\* (2) Where it appears necessary in the interest of justice, the court may order a further affidavit to be made by any other member of the partnership.

## NOTES

(6)

(7)

(9)

Rule 293(2)

Rule 295

Rule 294

### CONTINUED

#### *\*(6) On Behalf of a Partnership*

An affidavit may be made on behalf of a partnership by any member of the partnership, or by any employee thereof.

#### *(7) By an Illiterate or Blind Person*

Where it appears to a person before whom an affidavit is sworn that the deponent is illiterate or blind, he shall certify in the jurat that the affidavit was read in his presence to the deponent who appeared to understand it, and that the deponent signed the affidavit or placed his mark on it in his presence.

#### *(8) By a Person who does not Understand the Language*

Where it appears to a person before whom an affidavit is sworn that the deponent does not understand the language used in the affidavit, he shall certify in the jurat that the affidavit was interpreted to the deponent in his presence by a named interpreter sworn by him to interpret the affidavit correctly.

#### *(9) Alterations*

Any interlineation, erasure or other alteration in an affidavit shall be initialled by the person before whom the affidavit is sworn and, unless so initialled, the affidavit shall not be used without leave of the judge or officer hearing the proceeding.

#### *(10) Proof of Signature*

An affidavit, purporting to be signed by a person authorized to administer oaths in or out of Ontario, shall be admitted in evidence without proof of the signature of that person.

#### Rule 293

(2) In any action or proceeding to which a partnership is a party, any affidavit required by these rules to be made by a party may be made by any member of the partnership.

% (3) Where it appears necessary in the interest of justice, the court may order a further affidavit to be made by any other member of the partnership.

#### Rule 295

295. Where an affidavit is sworn by a person who appears to be illiterate, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, who seemed perfectly to understand it, and signed it in his presence; otherwise such affidavit shall not be used without leave.

#### Rule 294

294. An affidavit having in the jurat or body thereof any interlineation, alteration or erasure shall not be used without leave, unless the interlineation, alteration or erasure is authenticated by the initials of the officer taking the affidavit.

4.08 (1)  
 (2)  
 (3)  
 (4)  
 (5)  
 (6)

#### 4.08 Issuing and Filing of Documents

(1) An originating process may only be issued upon personal attendance in the court office of the party or someone on his behalf.

(2) Except where filed in the course of a trial or hearing or where otherwise provided in these rules, all documents shall be filed in the court office in which the proceeding was commenced.

(3) Where a motion is being brought in a place other than where the proceeding was commenced, any document to be used on the motion may be filed in the court office at the place of hearing and upon the disposition of the motion shall be returned by the registrar to the court office where the proceeding was commenced.

(4) Any document, other than an originating process, may be filed by leaving it in the proper court office or by mailing it to the proper court office accompanied by the prescribed fee, where a fee is required.

(5) The date of filing of any document received by a court office through the mail shall be deemed to be the date which appears in the official filing stamp of the court office stamped upon the document.

(6) Where a court office has no record of the receipt of any document alleged to have been filed by mailing, the document shall not be treated as filed, unless otherwise ordered.

Rule 760 (1)  
 Rule 763  
 Rule 237 (1)  
 Rule 760 (2)  
 Rule 760 (3)  
 Rule 760 (4)

#### Rule 760

760.—(1) Except as provided in sub-rule (2), or otherwise ordered or provided, all business in the offices of the courts shall be transacted only upon the personal attendance of the party on whose behalf such business is required to be transacted, or of the solicitor of such party, or the clerk or agent of the solicitor, or the clerk of the agent.

(2) Provided that the proper fee as prescribed by Tariffs B and C accompanies the same, the following may be forwarded by prepaid ordinary mail to the proper officer for filing in accordance with the rules:

- (a) a writ of execution;
- (b) an appearance by a solicitor, an affidavit of merits, a pleading, a jury notice, a notice of trial, a notice of change of solicitors, a notice of discontinuance and an affidavit on production;
- (c) a notice of a desire of an opportunity to redeem;
- (d) a notice of appeal, an appellant's statement, a respondent's statement and a notice of perfection in an appeal to an appellate court.
- (e) a notice of motion together with supporting documents.
- (f) a certificate of readiness.
- (g) a true copy of an issued and entered order or judgment.

(3) The date of filing of any document received pursuant to sub-rule (2) or (5) shall be deemed to be that which appears upon the said document in the official filing stamp of the sheriff, registrar or clerk of the court.

(4) Where a document is purposed to have been mailed pursuant to sub-rule (2) or (5) and the records of the sheriff, registrar or clerk of the court do not indicate that the same was received, the said document shall be deemed not to have been received. [Amended, O. Regs. 285/71, s. 19; 569/75, s. 6; 451/77, s. 4; 32/78, s. 6; 520/78, ss. 42-44.]

#### Rule 763

763. Where the first document in a cause or matter is required to be filed in Toronto, the Registrar's office shall be deemed to be the office in which the cause or matter was commenced and in other cases the office of the local registrar of the county or district in which such first document is required to be filed shall be deemed to be the office in which the cause or matter was commenced.

#### Rule 237

237.—(1) All papers for use on a motion at Toronto shall be filed in the Registrar's office, and, when, no longer required, all such papers and all papers forwarded for use on the motion shall be transmitted to the office in which the proceedings were commenced.

NOTES**\* 4.09 Trial Record**

(1) The record to be filed when an action is set down for trial shall contain,

- (a) a copy of any Jury Notice;
- (b) a copy of the pleadings, including those relating to any counterclaim or cross-claim;
- (c) a copy of any demand or order for particulars and the particulars delivered pursuant thereto; and
- (d) a memorandum signed by the registrar stating that,
  - (i) the record contains a copy of all pleadings in the action and all particulars ordered to be delivered therein and that the time for delivery of any pleadings has expired;
  - (ii) any defendant who has failed to deliver a Statement of Defence has been noted in default; and
  - (iii) where applicable, judgment has been obtained, or the action has been discontinued or dismissed, as against any defendant, as the case may be.

(2) There shall be attached to the record a copy of,

- (a) any order respecting the trial;
- (b) any memorandum signed by counsel or order by the court following a pre-trial conference; and
- (c) in an undefended action, any affidavit to be used in evidence.

**Rule 248**

248.—(1) The party setting an action down for trial shall file at that time a record containing a certified copy of,

- (a) the pleadings and particulars;
- (b) any statement of property or statement of financial information filed in the action pursuant to the provisions of The Family Law Reform Act, 1978; and
- (c) any order containing directions respecting the trial. (Amended, O. Reg. 367/73, s. 26; 216/78, s. 11.)

(2) Such record shall contain the full style of cause, and shall show the date when the writ was issued, and shall give the names of the solicitors for the several parties, and shall show, if such be the case, that judgment has been signed or the pleadings have been noted closed as against any parties in default.

NOTE. Where there is a jury notice, a copy shall be attached to the record.—The Judicature Act, R.S.O. 1970, c. 22B, s. 62(2).

**\* Rule 169**

(3) The statement of the defendant's claim against the third party, the third party's statement of defence and the reply, if any, shall constitute the record in the third party proceedings. (Amended, O. Reg. 108/75, s. 16.)

## RULE 5 JOINDER OF CLAIMS AND PARTIES

### 5.01 Joinder of Claims

- (1) A plaintiff or applicant may join in the same proceeding any claims he has against an opposite party, whether or not they are being made in the same or different capacities.
- (2) It is not necessary that every defendant or respondent be interested in all the relief claimed or in every claim included in any proceeding.

### 5.02 Joinder of Necessary Parties

- (1) A plaintiff or applicant who claims relief to which any other person is jointly entitled shall join as parties to the proceeding all parties so entitled.
- (2) Every person shall be joined as a party to a proceeding whose presence is necessary to enable the court to effectively and completely adjudicate upon the issues or questions involved in the proceeding.
- (3) Any such person who does not consent to be joined as a plaintiff or applicant shall be made a defendant or respondent.
- (4) The court, in its discretion, may relieve against the necessity for the joinder of any such person.

### Rule 69

69. A plaintiff may unite, in the same action, several causes of action.

### Rule 68

68. It is not necessary that every defendant to an action be interested as to all the relief claimed, or as to every cause of action included therein.

### Rule 80

80. A residuary legatee or next of kin may have a judgment for the administration of the personal estate of a deceased person without serving the other residuary legatees or next of kin.

NOTES**5.03 Permissive Joinder of Parties****(1) Multiple Plaintiffs**

Persons may be joined as plaintiffs or applicants, provided they are represented in the proceeding by the same solicitor, where,

- (a) they assert any rights to relief (whether jointly, severally, or in the alternative) in respect of or arising out of the same transaction, occurrence or series of transactions or occurrences;
- (b) any common question of law or fact may arise in the proceeding; or
- (c) it appears that their presence in the proceeding may promote the convenient administration of justice.

**Rule 66**

66. All persons may be joined in an action as plaintiffs in whom any right to relief in respect of or arising out of the same transaction or occurrence, or series of transactions or occurrences, is alleged to exist, whether jointly, severally or in the alternative, where if such persons brought separate actions any common question of law or fact would arise; but, if, upon the application of a defendant, it appears that such joinder may embarrass or delay the trial of the action, the court may order separate trials, or make such other order as may be expedient; and, without any amendment, judgment may be given for such one or more of the plaintiffs as may be found entitled to relief, for such relief as he or they may be entitled to, but the defendant, though unsuccessful, is entitled to his costs occasioned by joining any person who is not found entitled to relief, unless the court otherwise orders.

NOTES

## CONTINUED

**(2) Multiple Defendants**

Persons may be joined as defendants or respondents where,

- (a) there is asserted against them (whether jointly, severally, or in the alternative) any rights to relief arising out of the same transaction, occurrence, or series of transactions or occurrences;
- (b) any common question of law or fact may arise in the proceeding;
- (c) there is doubt as to the person or persons from whom the plaintiff or applicant is entitled to relief;
- (d) damage or loss has been caused to the same plaintiff or applicant by more than one person, whether or not there is any factual connection between the several claims apart from the involvement of the plaintiff or applicant, and there is doubt as to the person or persons from whom he is entitled to relief or the respective amounts for which each may be liable; or
- (e) it appears that their presence in the proceeding may promote the convenient administration of justice.

**Rule 67**

67. Where the plaintiff claims that the same transaction or occurrence, or series of transactions or occurrences, give him a cause of action against one or more persons, or, where he is in doubt as to the person from whom he is entitled to redress, he may join as defendants all persons against whom he claims any right to relief, whether jointly, severally or in the alternative, and judgment may be given against one or more of the defendants according to their respective liabilities, but the court may order separate trials or make such other order as is deemed expedient if such joinder is deemed oppressive or unfair.

[For cases as to joinder of defendants under the Negligence Act see *Ontario Statute Annotations* sub tit. Negligence Act. See also Rule 136 and Rule 319.  
— Ed.]

NOTES

5.04(1)  
(2)  
(3)

Rule 90  
Rule 136(1)  
Rule (2)

19

**5.04 Misjoinder and Non-Joinder**

(1) No proceeding shall be defeated by reason of the misjoinder or non-joinder of any party and the court may, in any proceeding, determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the proceeding and pronounce judgment without prejudice to the rights of all persons who are not parties.

(2) At any stage of a proceeding the court may grant leave to add, delete or substitute any party and such leave shall be given, on such terms as may seem just, unless prejudice will result which cannot be compensated for by costs or an adjournment.

(3) No person shall be added as a plaintiff or applicant without filing his consent in writing.

**Rule 90**

90. The court, if it thinks fit, may pronounce a judgment saving the Rights of all persons not parties.

**Rule 136**

136.—(1) The court may, at any stage of the proceedings, order that the name of a plaintiff or defendant improperly joined be struck out, and that any person who ought to have been joined, or whose presence is necessary in order to enable the court effectually and completely to adjudicate upon the questions involved in the action, be added or, where an action has through a bona fide mistake been commenced in the name of the wrong person as plaintiff or where it is doubtful whether it has been commenced in the name of the right plaintiff, the court may order any person to be substituted or added as plaintiff.

(2) No person shall be added or substituted as a plaintiff or as the next friend of a plaintiff without his own consent in writing thereto being filed.

NOTES**5.05 Relief Against Joinder**

Where it appears that the joinder of multiple claims or parties in the same proceeding may unduly complicate or delay the trial, or cause undue prejudice to any party, the court may,

- (a) order separate trials;
- (b) require one or more of such claims to be asserted, if at all, in another proceeding;
- (c) order that any party be compensated for being required to attend, or be relieved from attending, any part of a trial in which he has no interest;
- (d) dismiss the proceeding against any defendant, without prejudice to the right of the plaintiff to assert the same claims against the defendant in a subsequent proceeding, on condition that such defendant be bound by the determination of the issues in the original proceeding; or
- (e) make such other order as may seem just.

**Rule 66**

66. All persons may be joined in an action as plaintiffs in whom any right to relief in respect of or arising out of the same transaction or occurrence, or series of transactions or occurrences, is alleged to exist, whether jointly, severally or in the alternative, where if such persons brought separate actions any common question of law or fact would arise; but, if, upon the application of a defendant, it appears that such joinder may embarrass or delay the trial of the action, the court may order separate trials, or make such other order as may be expedient; and, without any amendment, judgment may be given for such one or more of the plaintiffs as may be found entitled to relief, for such relief as he or they may be entitled to, but the defendant, though unsuccessful, is entitled to his costs occasioned by joining any person who is not found entitled to relief, unless the court otherwise orders.

[See also Rule 136 and Rule 319. — Ed.]

**Rule 67**

67. Where the plaintiff claims that the same transaction or occurrence, or series of transactions or occurrences, give him a cause of action against one or more persons, or, where he is in doubt as to the person from whom he is entitled to redress, he may join as defendants all persons against whom he claims any right to relief, whether jointly, severally or in the alternative, and judgment may be given against one or more of the defendants according to their respective liabilities, but the court may order separate trials or make such other order as is deemed expedient if such joinder is deemed oppressive or unfair.

[For cases as to joinder of defendants under the Negligence Act see Ontario Statute Annotations sub tit. Negligence Act. See also Rule 136 and Rule 319. — Ed.]

**Rule 73**

73. If several causes of action joined in the same action are such as cannot be conveniently disposed of in one action, the court may order any of them to be excluded, or may direct the issues respecting the separate causes of action to be tried separately.

**RULE 6 CONSOLIDATION OR TRIAL TOGETHER**NOTES**6.01 Where Actions in Same Court**

(1) Where two or more actions are pending in the same court, and it appears to the court that,

- (a) some common question of law or fact arises in both or all of them;
- (b) the rights to relief claimed therein are in respect of, or arise out of, the same transaction, occurrence or series of transactions or occurrences; or
- (c) for any other reason it is desirable to make an order under this rule;

the court may order the actions to be consolidated, or to be tried at the same time, or one immediately after the other, or may order any of them to be stayed until after the determination of any other of them, on such terms as may seem just.

(2) In any such order, the court may give such directions as may tend to avoid unnecessary costs or delay and, for that purpose, the court may dispense with service of a notice of trial and abridge the time for placing an action on the list for trial.

(3) An order for the trial together of two or more actions, or for the trial of one immediately after the other, shall be subject to the discretion of the trial judge.

**6.02 Where Actions in Different Courts**

(1) Where the actions in question are pending in the Supreme Court and in one or more county courts, an order under Rule 6.01 may be made on motion to a judge of the Supreme Court and any such order may transfer any action affected by the order to another court. Thereafter, any such action shall be styled in the court to which the action is transferred and shall be proceeded with as if it had been commenced in that court.

(2) Where the actions in question are pending in two or more county courts, such an order may be made by the Chief Judge of the County and District Courts of Ontario or by a master at Toronto.

**Rule 319**

319. Actions may be consolidated by order of the court.

7

- 7.01(a)
- (b)
- (c)
- (d)

- Rules 92; 93; 226
- Rules 98; 99; 226
- Rules 95; 97; 226
- Rule 98

## RULE 7 PARTIES UNDER DISABILITY

### 7.01 Representation

Unless otherwise ordered or provided by any statute, a proceeding shall be commenced, continued or defended in the case of,

- (a) a minor, by a litigation guardian;
- (b) a person who has been declared mentally incompetent or incapable of managing his own affairs, by the committee of his estate, or where there is no such committee, by the committee of his person;
- (c) a person who is mentally incompetent or incapable of managing his own affairs, not so declared, by his committee if there is one, or if not, by a litigation guardian;
- (d) a person who has been declared an absentee, by his committee if one has been appointed, or if not, by the Public Trustee.

*(Note. See s. 7(4) of the Motor Vehicle Accident Claims Act where the defendant is an infant)*

### Rule 92

92.—(1) An infant may sue or counter-claim by his next friend, and may defend by his guardian appointed for that purpose or by the Official Guardian, as the case may be.

(2) Where the Official Guardian is guardian ad litem for an infant, he may act as next friend for the purpose of asserting a counter-claim on behalf of the infant

### Rule 93

93. Where an infant defendant is not represented by the Official Guardian, a guardian may be appointed for him by the court.

### Rule 226

226. Where an infant or a mentally incompetent person is a defendant or interested in a fund in court, no order in any way affecting his interest shall be made without notice to his guardian ad litem or committee.

### Rule 98

98. A mentally incompetent person who has been so found, and an absentee, may sue or defend by his committee.

### Rule 99

99. A person who has been declared incapable under section 39 of The Mental Incompetency Act shall be represented by a person who is authorized under that Act.

### Rule 95

95. A mentally incompetent person not so found by inquisition or judicial declaration may sue by his next friend and may defend by his guardian ad litem.

### Rule 97

97. Where a mentally incompetent person not so found by inquisition or judicial declaration is served with an office copy of a judgment or order or is made a party after judgment, a guardian ad litem shall be appointed for him after the like notice.

NOTES

**7.02 Litigation Guardian for Plaintiff or Applicant**

(1) Any person, not under disability, may act as litigation guardian for a plaintiff or applicant who is under disability without being appointed by the court.

(2) No person except the Official Guardian or the Public Trustee shall commence to act as litigation guardian for a plaintiff or applicant who is under disability until he has filed an affidavit in which he,

- (a) consents to act in that capacity;
- \* (b) confirms that he has given written authority to a solicitor to act and specifies the name of that solicitor;
- (c) sets out his place of residence and that of the person under disability;
- (d) sets out his relationship, if any, to the person under disability;
- (e) states that he has no interest in the proceeding adverse to that of the person under disability; and
- (f) acknowledges that he has been informed of his liability to pay personally any costs awarded against him or against the party under disability.

\*  
**Rule 100**

100. Unless otherwise ordered, before the name of a person is used as next friend or as relator, such person shall sign a written authority to the solicitor for that purpose, and the authority shall be filed in the office in which the cause or matter is commenced.

## NOTES

## 7.03 Litigation Guardian for Defendant or Respondent

(1) Unless otherwise ordered, the Official Guardian shall act as the litigation guardian of a defendant or respondent where the proceeding is against a minor, in respect of his interest in an estate or trust.

(2) Except as provided in paragraph (1), no person shall act as a litigation guardian for a defendant or respondent who is under disability until he has been appointed by the court.

(3) Where a person under disability has been served with an originating process as provided by these rules and has failed to deliver a defence by his committee or litigation guardian or to apply for the appointment of a litigation guardian within the time limited for the delivery of his defence, the plaintiff or applicant, before continuing a proceeding shall apply for an order from the court appointing a litigation guardian for the person under disability on notice to such person.

(4) A motion for the appointment of a litigation guardian may be made without notice to the person under disability where a Request for Appointment of Litigation Guardian (Form 7A) was served with the originating process on the person under disability.

(5) Where the plaintiff or applicant intends to apply for the appointment of the Official Guardian or the Public Trustee as litigation guardian for the person under disability, a Request for Appointment of Litigation Guardian shall be served on the person under disability not less than 10 days before applying for such appointment.

(6) Where it is sought to appoint the Official Guardian or the Public Trustee as the litigation guardian, the Notice of Motion shall be served on him together with proof of service of the originating process and either the Notice of Motion or a Request for Appointment of Litigation Guardian, as the case may be, on the person under disability.

## Rule 18

(3) From the time of such service, the Official Guardian is the guardian ad litem of the infant, unless and until otherwise ordered, and it is the duty of the Official Guardian, or of any other guardian appointed for such infant, forthwith to attend to the interests of the infant, and to take all such proceedings as may be necessary for the protection of such interests in the proceeding in which he is appointed guardian, and for that purpose to communicate with all proper persons and parties, including the father or guardian of the infant and the person with whom or under whose care the infant is.

## Rule 93

93. Where an infant defendant is not represented by the Official Guardian, a guardian may be appointed for him by the court.

## Rule 94

94. Where the appointment of a guardian, other than the Official Guardian, to defend an action or matter is desired, the court may appoint a guardian for that purpose upon being satisfied by affidavit that the proposed guardian is a fit and proper person and has no adverse interest; and the court may examine the proposed guardian or the person making the affidavit, *viva voce*, or require further evidence to be adduced until satisfied of the propriety of the appointment.

## Rule 22

22. After service of the writ, no further proceedings shall be taken against a defendant who is a mentally incompetent person and has no committee, or no committee except the Public Trustee, or against a defendant of unsound mind not so found, until a guardian ad litem is appointed.

NOTE: As to service upon a patient in an institution, see Part III of the Mental Health Act, R.S.O. 1970, c. 269.

## Rule 96

96.—(1) Where no appearance has been entered to a writ of summons for a defendant who is a mentally incompetent person not so found, the plaintiff may apply for an order that a guardian of such defendant be appointed, by whom he may appear and defend.

(2) No such order shall be made unless it appears that the writ was duly served and that notice of the application was, after the expiration of the time allowed for appearance and at least six clear days before the day in the notice named for hearing the application, served upon or left at the dwelling-house of the person with whom the defendant resides or under whose care he is at the time of serving such notice.

(3) The Official Guardian shall be appointed, unless for good reason it is otherwise directed.

(4) Where the mentally incompetent person is confined in a psychiatric facility as defined by The Mental Health Act, the Public Trustee shall be appointed unless otherwise ordered.

**NOTES**

7.04  
7.05 (2)

Rule 96  
Rule 18 (3)

25

**7.04 Appointment of Official Guardian or Public Trustee**

Unless there is some other fit and proper person willing and able to act as litigation guardian, the court shall appoint,

- (a) the Official Guardian where the person under disability is a minor;
- (b) the Public Trustee where the person under disability is mentally incompetent or is incapable of managing his own affairs, not so declared, and has no committee;
- (c) either the Official Guardian or the Public Trustee where the person under disability is a minor and is also mentally incompetent or incapable of managing his own affairs, not so declared, and has no committee.

**7.05 Powers and Duties of Litigation Guardian**

(1) Where a party is under disability, anything that is required or authorized by these rules to be done by a party in a proceeding may be done on his behalf by his litigation guardian.

(2) A litigation guardian shall diligently attend to the interests of the person under disability and take all proceedings that may be necessary for the protection of his interests, including proceedings by way of counterclaim, cross-claim or third party claim and, notwithstanding the provisions of Rule 7.03 (2), a litigation guardian for a plaintiff may defend a counterclaim.

(3) A litigation guardian shall act through a solicitor and shall instruct that solicitor in the conduct of the proceeding; however, where the litigation guardian is the Official Guardian or the Public Trustee he need not act through another solicitor.

**Rule 96**

96.—(1) Where no appearance has been entered to a writ of summons for a defendant who is a mentally incompetent person not so found, the plaintiff may apply for an order that a guardian of such defendant be appointed, by whom he may appear and defend.

(2) No such order shall be made unless it appears that the writ was duly served and that notice of the application was, after the expiration of the time allowed for appearance and at least six clear days before the day in the notice named for hearing the application, served upon or left at the dwelling-house of the person with whom the defendant resides or under whose care he is at the time of serving such notice.

(3) The Official Guardian shall be appointed, unless for good reason it is otherwise directed.

(4) Where the mentally incompetent person is confined in a psychiatric facility as defined by The Mental Health Act, the Public Trustee shall be appointed unless otherwise ordered.

*Gilman v. Allingham*, [1962] O.W.N. 247 [Co. Ct.].

On a plaintiff's application for appointment of a guardian *ad litem* of a lunatic not so found in the absence of any other nomination the Official Guardian must be named.

**RULE 18**

(3) From the time of such service, the Official Guardian is the guardian *ad litem* of the infant, unless and until otherwise ordered, and it is the duty of the Official Guardian, or of any other guardian appointed for such infant, forthwith to attend to the interests of the infant, and to take all such proceedings as may be necessary for the protection of such interests in the proceeding in which he is appointed guardian, and for that purpose to communicate with all proper persons and parties, including the father or guardian of the infant and the person with whom or under whose care the infant is.

NOTES**7.06 Removal or Substitution of Litigation Guardian**

(1) Where, in the course of any proceeding,

- (a) a minor, for whom a litigation guardian has been acting, comes of age, the minor or his litigation guardian may, on filing an affidavit verifying those facts, obtain from the registrar an Order to Continue (Form 7B) authorizing the minor to continue the proceeding without the litigation guardian;
- (b) a party under any other disability, for whom a litigation guardian has been acting, ceases to be under such disability, such party or his litigation guardian may apply to the court without notice to any of the other parties to the proceeding for an order to continue the proceeding without the litigation guardian.

(2) Where, at any time, it appears to the court that a litigation guardian is not acting in the best interests of the person under disability, the court may substitute the Official Guardian, the Public Trustee or any other person as a litigation guardian upon such terms and conditions as may seem just.

NOTES**7.07 Approval of Settlement or Compromise**

(1) No settlement or compromise of any claim made by or on behalf of a person under disability, whether or not any proceeding has been commenced in respect of that claim, is binding upon him and no judgment may be obtained against him by default or on consent without the approval of a judge.

(2) The approval of a judge under paragraph (1) is not required where the Public Trustee is the committee of the estate of the person under disability, except where the Public Trustee has been so appointed pursuant to the provisions of *The Mental Incompetency Act*.

(3) Where an agreement for the settlement or compromise of any claim made by or on behalf of a person under disability is reached before a proceeding has been commenced in respect of that claim, the approval of a judge shall be obtained on an application.

(4) Unless a judge otherwise orders, notice of any motion or application for the approval of a judge under this rule shall be served on the Official Guardian, unless the Public Trustee has been appointed committee of the estate of the person under disability pursuant to the provisions of *The Mental Incompetency Act*, in which case such notice shall be served on him.

NOTES

## CONTINUED

(5) On a motion or application for the approval of a judge under this rule, the following shall be served and filed with the Notice of Motion or Notice of Application, as the case may be,

- (a) an affidavit of the committee or litigation guardian as to his position in respect of the proposed settlement or compromise;
- (b) an affidavit of the solicitor or counsel acting for the committee or litigation guardian as to his recommendation in respect of the proposed settlement or compromise;
- (c) where the person under disability is a minor who is over the age of 16 years, his consent in writing; and
- (d) a copy of the proposed minutes of settlement or consent to dismissal.

(6) Any monies payable to a person under disability, pursuant to any settlement or compromise of a claim made by or on behalf of a person under disability for which the approval of a judge is required under this rule, shall be paid into court to his credit, except to the extent that such monies represent special damages, in which case the judge approving such settlement or compromise may otherwise direct.

NOTES

CONTINUED

- (7) On a motion for the appointment of a litigation guardian, there shall be affidavit or other evidence as to,
- (a) the nature of the proceeding;
  - (b) the date on which the cause of action arose;
  - (c) the date on which the proceeding was commenced and the date of service of the originating process;
  - (d) the nature and extent of the disability;
  - (e) in the case of a minor, the date of birth;
  - (f) the place of residence of the person under disability and that of the proposed litigation guardian, unless he is the Official Guardian or the Public Trustee;
  - (g) the relationship, if any, of the proposed litigation guardian to the person under disability; and
  - (h) except where it is sought to have the Official Guardian or the Public Trustee appointed, the fact that the proposed litigation guardian,
    - (i) consents to act in that capacity;
    - (ii) is a proper person to be appointed; and
    - (iii) has no interest in the proceedings adverse to the person under disability.

8.01 (1)  
 (2)  
 8.02  
 8.03 (1)

Rule 102  
 Rule 109  
 Rules 104; 106  
 Rule 106

NOTES**RULE 8 PARTNERSHIPS AND SOLE PROPRIETORSHIPS****8.01 Partnerships**

(1) Any proceeding by or against two or more persons, as partners, may be commenced in the firm name of the partnership of which they were partners carrying on business at the time the cause of action arose.

(2) This rule applies to a proceeding between a partnership and one or more of its partners, and to a proceeding between partnerships having one or more partners in common.

**8.02 Defence**

Where a proceeding is commenced against a partnership in the firm name, the partners and the partnership shall deliver a common defence in the name of the firm, and no person who admits he was a partner at any material time may defend in his own name, except by leave of the court.

**8.03 Notice to Person Alleged to be a Partner**

(1) In a proceeding against a partnership in the firm name, no person, other than a named party, shall be held personally liable as a partner unless he has been served with the originating process, together with a Notice to Alleged Partner (Form 8A) informing him that he is alleged to be a partner.

(2) Any person served as provided in paragraph (1) shall be deemed to be a partner at all material times, unless he defends the proceeding in his own name denying that he was a partner at any material time, in which case he may also defend the proceeding on the merits.

(3) Where a person defends a proceeding in his own name pursuant to this sub-rule, or by leave of the court, he shall thereupon become a party to the proceeding as a defendant or respondent, and thereafter the style of cause shall be amended accordingly.

**Rule 102**

102. Any two or more persons, whether British subjects or not and whether residing within or out of Ontario, claiming or being liable as partners and carrying on business within Ontario at the time of the accruing of the cause of action may sue or be sued in the name of the firm of which such persons were co-partners.

**Rule 109**

109. Rules 102 to 108 apply to actions between a firm and one or more of the members and to actions between firms having one or more members in common, if the firm or firms carry on business within Ontario, but execution shall not issue in such actions without leave, and, on application for leave, all such accounts and inquiries may be ordered and directions as seem just.

**Rule 104**

104. Persons sued as partners in the name of the firm shall appear individually in their own names, but all subsequent proceedings shall continue in the name of the firm.

**Rule 106**

106. A person served as a partner may,  
 (a) enter an appearance under protest, denying that he is a partner, but such appearance does not preclude the plaintiff from otherwise serving the firm and obtaining judgment against the firm in default of appearance if no partner has entered an appearance in the ordinary form; or  
 (b) enter an appearance not only denying that he is a partner but also disputing the plaintiff's claim.

NOTES

8.04 (1)  
(2)  
8.05 (1)  
(2)  
(3)

**8.04 Disclosure of Partners**

(1) Where a proceeding is commenced by or against a partnership in the firm name, any other party may, at any time, serve a notice requiring the partnership to forthwith disclose in writing the names of all the partners constituting the partnership at the time the cause of action arose and their present place of residence. Where the present place of residence of any such partner is unknown, the partnership shall disclose the last known address of that partner.

(2) Where any partnership fails to comply with any such notice, any claim or defence as against the party who served the notice may be dismissed or struck out, as the case may be, or the proceeding may be stayed.

(3) Where the name of a partner is disclosed pursuant to a notice under paragraph (1) and that partner has not been served as provided in Rule 8.03, he may be so served within 15 days of the receipt of such disclosure.

**8.05 Enforcement of Judgment**

(1) A judgment against a partnership in the name of the firm may be enforced against the property of the partnership.

(2) A judgment against a partnership in the name of the firm, with leave of a judge, may also be enforced against any person who was served as provided in Rule 8.03 and who,

- (a) by that rule, is deemed to be a partner;
- (b) has admitted that he is a partner; or
- (c) has been adjudged to be a partner.

(3) Where, subsequent to the granting of any such judgment, the party obtaining it claims to be entitled to enforce it against any other person alleged to be a partner, he may apply to a judge for leave to do so, and the judge may grant such leave if the liability is not disputed; or, if disputed, after such liability has been determined in such manner as the judge may direct.

Rule 14 (1)  
Rule 14 (2)  
Rule 107 (1)  
Rule 107 (1)  
Rule 107 (2)

**Rule 14**

14.—(1) Where an action is brought in the name of a firm or in a name or style other than the plaintiff's own name, the plaintiffs shall, on demand, declare forthwith in writing the names and places of residence of all the persons constituting the firm or carrying on business under such name or style.

(2) If the plaintiffs fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed.

**Rule 107**

107.—(1) Where a judgment or order is obtained against a firm, execution may issue against the property of,

- (a) the partnership;
- (b) any person who has by his appearance or notice under rule 13 or pleading admitted that he is or who has been adjudged to be a partner;
- (c) any person who has been served as a partner with the writ of summons and has failed to appear.

(2) If the party who has obtained the judgment or order claims to be entitled to issue execution against any other person as being a member of the firm, he may apply for leave so to do, and the court may give such leave if the liability be not disputed, or, if disputed, after such liability has been determined in such manner as the court directs.

8.06(1)  
(2)

Rule 110(1)  
Rules 14; 110(3) to (7)

## NOTES

## 8.06 Sole Proprietorships

(1) Where a person carries on business in a business style other than his own name, any proceeding may be commenced by or against him in his business style.

(2) Insofar as they are applicable, all the provisions of this rule, with any necessary modifications, shall apply to a proceeding by or against a sole proprietor in his business style as though the sole proprietor were a partner and his business style were the firm name of a partnership.

## Rule 110

(1) Any person, whether a British subject or not, and whether residing within or out of Ontario, carrying on business within Ontario in a name or style other than his own name may be sued in such name or style.

(3) The person upon whom the writ is served shall be informed by notice in writing, given at the time of service, whether he is served as the person carrying on the business or as a person having the control or management of it, and in default of such notice he shall be deemed to be served as the person carrying on the business.

(4) The person so sued shall appear in his own name, but all subsequent proceedings shall continue in such name or style.

(5) A person served as the person carrying on the business may enter an appearance under protest denying that he is the person so carrying on the business, but such appearance does not preclude the plaintiff from otherwise serving the person sued or from obtaining judgment in default of appearance in the ordinary form by the person so sued.

(6) Any judgment or order in the action may be enforced by execution against,

(a) the property of the person so sued, used or employed in or in connection with the business;

(b) any property of a person who by his appearance or by notice under rule 14 has admitted that he is or has been adjudged to

## Rule 14

(1) Where an action is brought in the name of a firm or in a name or style other than the plaintiff's own name, the plaintiffs shall, on demand, declare forthwith in writing the names and places of residence of all the persons constituting the firm or carrying on business under such name or style.

(2) If the plaintiffs fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed,

by the person carrying on the business, or has been served with the writ as the person carrying on the business and has failed to appear.

(3) Where judgment has been signed for default of appearance and the writ has not been personally served upon the person whom the plaintiff alleges to be carrying on the business, the court may give leave to issue execution against such person if his liability be not disputed, or, if disputed, after it has been determined in such manner as the court directs.

NOTES**RULE 9 UNINCORPORATED ASSOCIATIONS****9.01 Definition**

For the purpose of this rule, *association* means an unincorporated organization of two or more persons, other than a partnership, operating under the name of the association for a common purpose or undertaking and includes any club, society, fraternity or syndicate, but does not include a trade union or an employer's organization as defined by *The Labour Relations Act*.

**9.02 Proceeding by or Against an Association**

Any proceeding may be brought by or against any association in the name of the association, whether or not the association is possessed of a trust fund.

**9.03 Effect of Judgment Against an Association**

(1) Any judgment against an association may be enforced against the property of the association, including property held in trust for the association.

(2) No member of an association shall be personally liable for the payment of any money under a judgment against the association unless he is a party to the proceeding and has been held to be personally liable for all or part of that judgment.

(3) An injunction or mandatory order against an association may, by leave of a judge, be enforced against any officer or member of the association.

**RULE 10 ESTATES AND TRUSTS****10.01 Proceedings by or against an Estate or Trust where there is a Personal Representative or Trustee**

(1) Any proceeding may be brought by or against an executor, administrator or trustee as representing the estate or trust of which he is the personal representative or trustee and as representing the persons beneficially interested therein without joining such persons as parties thereto.

- (2) Paragraph (1) does not apply to any proceeding,
  - (a) to establish or contest the validity of a will;
  - (b) to remove an executor, administrator or a trustee;
  - (c) against an executor, administrator or trustee for fraud or maladministration; or
  - (d) for the administration of an estate, or for the execution of a trust by the court.

(3) Where proceedings are commenced by executors, administrators or trustees, any executor, administrator or trustee who does not consent to be joined as a plaintiff or applicant shall be made a defendant or respondent.

(4) Nevertheless, the court may, at any time, order that any beneficiary, creditor or other interested person be made a party to a proceeding by or against a personal representative or trustee.

**Rule 74**

74.—(1) Trustees, executors and administrators may sue and be sued on behalf of, or as representing, the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested, and shall represent them; but the court may at any time order any of them to be made parties in addition to, or in lieu of, the previous parties.

(2) This rule applies to an action to enforce a security by foreclosure or otherwise.

NOTE: As to parties to mortgage actions where no personal representative, see R.S.O. 1970, c. I29, s. 9.

## NOTES

### **10.02 Proceedings against an Estate**

#### **where there is No Personal Representative**

(1) Where it appears that a deceased person has no personal representative, and a proceeding is sought to be commenced or continued against his estate, the court may, on motion, appoint a litigation administrator to represent the estate for the purposes of the proceeding.

(2) Before making an order appointing a litigation administrator, the court may require notice to be given to any insurer of the deceased person who has an interest in the proceeding, to the Superintendent of Insurance where the proceeding may impose liability on the Motor Vehicle Accident Claims Fund, and to any other person who may have an interest in the estate.

*(Note: See The Motor Vehicle Accident Claims Act, R.S.O. 1970, c. 281, s. 7(5))*

(3) Any judgment in a proceeding to which a litigation administrator is a party shall bind the estate of the deceased person, but shall have no effect whatsoever against the litigation administrator in his personal capacity, unless a judge otherwise orders.

*(Note: As to parties to mortgage actions where there is no personal representative, see The Devolution of Estates Act, R.S.O. 1970, c. 129, s. 9)*

NOTES**10.03 Remedial Provisions****(1) *Proceedings Commenced before Probate or Administration***

Where a proceeding is commenced by or against a person as executor or administrator before any grant of probate or administration has been made, a subsequent grant of probate or administration shall relate back to the commencement of the proceedings.

**(2) *Proceedings Brought by or against the Estate***

No proceeding commenced by or against the estate of a deceased person by naming *the estate of A.B., deceased* or *the personal representative of A.B., deceased* or any similar style of cause, or any proceeding where the wrong person is named as the personal representative, shall be treated as a nullity; but the court may make an order that the proceeding be continued by or against the proper personal representative of the deceased or against a litigation administrator appointed for the purpose of the proceeding, and the style of cause shall be amended accordingly.

**(3) *Proceedings Commenced in the Name of or Against a Deceased Person***

No proceeding commenced in the name of or against a person who has died prior to the commencement thereof shall be treated as a nullity, but the court may make an order that the proceeding be continued by or against his personal representative or a litigation administrator appointed for the purpose of the proceeding and the style of cause shall be amended accordingly.

**NOTES****CONTINUED****(4) Where There is a Personal Representative and a Litigation Administrator has been Appointed**

Where it appears that a deceased person, for whom a litigation administrator has been appointed, had a personal representative at the time of the appointment, the appointment shall not be treated as a nullity, but the court may make an order that the proceeding be continued against the personal representative and the style of cause shall be amended accordingly.

**(5) Stay of Proceedings until Properly Constituted**

No further step in any proceeding referred to in paragraphs (2), (3) and (4) shall be taken until it is properly constituted and, unless it is properly constituted within a reasonable time, the court may dismiss the proceeding or make such other order as may seem just.

**(6) Terms May Be Imposed**

Upon making an order under this rule, the court may impose such terms and conditions as may seem just, including a term that an executor or an administrator shall not be personally liable in respect of any part of the estate of a deceased person that he has distributed or otherwise dealt with in good faith, while not aware that a proceeding had been commenced against the estate.

**(7) General Power**

No proceeding by or against a deceased person or his estate shall be treated as a nullity because it was not properly constituted, but may be reconstituted by the court by analogy to the provisions of this rule, and this rule shall not be construed in any way as to limit the generality of Rule 2.02.

11

11.01(1)  
(2)Rules 76; 77  
Rules 76; 77**RULE 11 REPRESENTATION ORDER****\* 11.01 Representation of an Interested Person who Cannot be Ascertained**

- (1) In a proceeding concerning,
  - (a) the interpretation of a deed, will, contract or other instrument or the interpretation of any statute, order-in-council, regulation, municipal by-law or resolution;
  - (b) the determination of any question arising in the administration of an estate or trust;
  - (c) the approval of any sale, purchase, compromise or other transaction;
  - (d) the approval of an arrangement under *The Variation of Trusts Act*;
  - (e) the administration of the estate of a deceased person; or
  - (f) any other matter where it may seem necessary or desirable,

a judge may appoint one or more persons to represent any person, including any unborn or unascertained person, or the members of a class of persons who have a present, future, contingent or unascertained interest in, or who may be affected by the proceeding and who cannot be readily ascertained, found or served.

- (2) Where any appointment is made under paragraph (1), any judgment in the proceeding is binding upon a person or class so represented, unless a judge otherwise orders in the same or any subsequent proceeding.

**Rule 76**

76. Where the right of an heir at law or of the next of kin, or of a class, or of an unborn person, depends upon the construction of an instrument, and it is not known or is difficult to ascertain who is such heir at law or next of kin or class, and the court deems it convenient to have the question determined before the heir at law, next of kin or class in question is ascertained, or before the birth of any unborn person, the court may appoint some person to represent the heir at law, next of kin or class, or unborn person, and the judgment of the court is binding upon the person or class or unborn person so represented.

**Rule 77**

77. The Court may appoint some person to represent, for the purposes of any action or proceeding, the interest of any person or class, who may not be ascertained or who may be unborn, and the judgment of the court is binding upon the person or class so represented.

**\* Rule 78**

78. In any proceedings under *The Variation of Trusts Act*, the court may appoint some person to represent the interest of any person or class which may be affected thereby.

CONTINUED

(3) Where, in a proceeding under paragraph (1), a compromise is proposed, and any person or member of the class represented in the proceeding is not a party, a judge, if satisfied that the compromise will be for the benefit of that person or member of the class and that it is expedient to exercise the power, may approve of the compromise and order that it shall be binding on that person or member of the class and, unless the order has been obtained by fraud or non-disclosure of material facts, that person or member of the class shall be bound accordingly.

**11.02 Representation of a Deceased Person**

Where it appears to a judge that a deceased person has an interest in a matter in question in the proceeding and has no personal representative, the judge may proceed in the absence of a person representing the estate of the deceased person or appoint a person to represent the estate for the purposes of the proceeding, and any judgment in the proceeding shall bind the estate of the deceased person to the same extent as it would have been bound had a personal representative of that person been a party to the proceeding.

Rule 79  
Rule 91

**Rule 79**

79. Where in a proceeding concerning a trust a compromise is proposed and some of the persons interested in the compromise are not parties to the proceeding, but there are other persons in the same interest before the court and consenting to the compromise, the court, if satisfied that the compromise will be for the benefit of the absent persons and that to require service on them would cause unreasonable expense or delay, may approve the compromise and order that the same shall be binding on the absent persons, and they are bound accordingly, except where the order has been obtained by fraud or non-disclosure of material facts.

**Rule 91**

91. Where it appears that a deceased person who was interested in the matters in question has no personal representative, the court may either proceed in the absence of any person representing his estate or may, on such notice as seems proper, appoint some person to represent the estate for all the purposes of the action or other proceeding, notwithstanding that the estate in question may have a substantial interest in the matters, or that there may be active duties to be performed by the person so appointed, or that he may represent interests adverse to the plaintiff, or that administration of the estate whereof representation is sought is claimed; and the order so made and any orders consequent thereon bind the estate of such deceased person in the same manner as if a duly appointed personal representative of such person had been a party to the action or proceeding.

## \* RULE 12 JOINDER OF ASSIGNOR

### 12.01 Where Assignor is a Necessary Party

In a proceeding by the assignee of a debt or other *chose in action*, the assignor shall be joined as a party unless,

- (a) the assignment is absolute and not by way of charge only; and
- (b) notice in writing has been given to the person liable in respect of the debt or *chose in action* that an assignment thereof has been made in favour of the assignee.

### 12.02 Assignor Made Defendant

Where the assignor is a necessary party and does not consent to being joined as a plaintiff or applicant, he shall be made a defendant or respondent unless the court otherwise orders.

### \* Rule 89

89. An assignee of a *chose in action* may sue in respect thereof without making the assignor a party. (See R.S.O. 1970, c. 85, s. 54.)

13.01  
13.02 (1)  
          (2)  
13.03

Rules 299; 300  
Rule 300  
Rules 300; 304  
Rules 301; 302

## NOTES

### RULE 13 TRANSFER OR TRANSMISSION OF INTEREST

#### 13.01 Effect of Transfer or Transmission

Where at any stage of a proceeding, the interest or liability of any party is transferred or transmitted to some other person, the proceeding shall be stayed until an order to continue the proceeding against such other person has been obtained.

#### 13.02 Order to Continue

(1) Where a transfer or transmission of the interest or liability of any party has taken place while a proceeding is pending, the party having the carriage of a proceeding may, on filing an affidavit verifying those facts, obtain from the registrar an Order to Continue (Form 13A), without notice to any of the other parties to the proceeding.

(2) Where the party having carriage of the proceeding fails to obtain such an order within 30 days after such transfer or transmission has taken place, any other interested party may do so.

#### 13.03 Application to Vary or Discharge Order

Any person made a party to a proceeding by an order to continue may apply to the court to vary or discharge the order within 10 days from the day it was served upon him.

#### Rule 299

299. If by reason of death, where the cause of action survives or continues, or by assignment or conveyance any estate, interest or title devolves or is transferred, the action may be continued by or against the person to or upon whom such estate or title has come or devolved.

#### Rule 300

300. Where a change or transmission of interest or liability has taken place or where by reason of any person interested coming into existence after the commencement of the action, it becomes necessary or desirable that a person not already a party should be made a party, or that a person already a party should be made a party in another capacity, an order that the proceedings be carried on between the continuing parties and the new party may be obtained on praecipe (Form 63).

#### Rule 304

304. Where a plaintiff has died and proceedings may be continued, the defendant may apply to the court on notice to compel the person entitled to proceed with the action to proceed according to these rules within such time as the court orders, and that in default the action be dismissed for want of prosecution.

#### Rule 301

301. Such order and a notice according to Form 64 shall be served upon the continuing parties or their solicitors, and upon the new party.

#### Rule 302

302. A person served with such an order may apply to the court to discharge or vary it at any time within ten days from its service.

**RULE 14 CLASS ACTIONS****14.01 Where Available**

Where there are numerous persons having the same interest, one or more may bring or defend a proceeding on behalf of, or for the benefit of, all, or may be authorized by the court to do so.

**RULE 15 INTERVENTION****15.01 Leave to Intervene as Added Party**

(1) Where any person, who is not a party to a proceeding, claims an interest in the subject matter of the proceeding or that he may be adversely affected by a judgment in the proceeding or that there exists between himself and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in issue in the proceeding, he may apply to the court for leave to intervene therein as an added party.

(2) On any such motion, the court shall consider whether or not the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding and the court may add such person as a party to the proceeding and may make such order as to pleadings, production and discovery and impose such conditions as to costs or otherwise as may seem just.

**15.02 Leave to Intervene Without Being Added**

Any person may, with leave of the court and without becoming a party to the proceeding, intervene therein as a friend of the court for the purpose of rendering assistance to the court by way of argument.

**Rule 75**

75. Where there are numerous persons having the same interest, one or more may sue or be sued or may be authorized by the court to defend on behalf of, or for the benefit of, all.

43

16.01
16.03 (1)
(2)
(3)

NOTES**RULE 16 ORIGINATING PROCESS****16.01 How Proceedings Commenced**

Unless otherwise provided by any statute, all civil proceedings, except a counterclaim against a plaintiff only or a cross-claim, shall be commenced by the issuing of an originating process by the registrar of the court in which the proceeding is to be commenced.

**16.02 Where Leave Required**

Where leave to commence a proceeding is required, the application for leave shall be treated as if it were a motion in a proceeding and, unless otherwise provided by any statute, may be made to the court.

**16.03 By Statement of Claim or Notice of Action**

\*(1) Unless otherwise provided by these rules, the originating process for the commencing of any proceeding shall be a Statement of Claim (Form 16A).

(2) Where there is insufficient time to prepare a Statement of Claim, an action may be commenced by the issuing of a Notice of Action (Form 16B) upon which shall be endorsed a brief statement of the nature of the claim.

(3) Where a Notice of Action is used, the plaintiff shall file his Statement of Claim (Form 16C) within 30 days of the issuing of the Notice of Action, and no Statement of Claim shall be filed thereafter without leave of the court obtained on notice to the defendant.

Rule 4  
Rules 4; 6  
Rules 5; 6; 32(1)  
Rules 5; 6

**Rule 4**

4. Except where otherwise authorized by a statute or by a rule, every proceeding in the court, other than a proceeding that may be taken ex parte, shall be by action commenced by the issue of a writ of summons.

**Rule 6**

6. A writ of summons which is generally endorsed shall be according to Form 1. [Amended, O. Reg. 106/75, s. 1.]

**Rule 5**

5.—(1) The writ shall be prepared by the plaintiff and shall contain the names of the parties and the capacity in which they sue and are sued and shall state the office in which and the time within which the defendant is to enter his appearance and shall be endorsed with a short statement of the nature of the plaintiff's claim.

(2) Writs shall be sealed with the seal of the Supreme Court or with the seal kept in the local office, as the case may be, and shall conclude with the words "IN WITNESS WHEREOF this writ is signed for the Supreme Court of Ontario by .....  
Registrar of the said Court at Toronto [or by] .....  
Local Registrar of the Said Court at ..... [and] and shall state the date and place of issue and shall be signed by the officer issuing the name or in his name by a member of his staff to whom the officer has delegated such authority.

(3) A copy of the writ certified by the plaintiff's solicitor shall be filed with the officer at the time the writ is issued.

**Rule 32**

32.—(1) Upon every writ of summons the plaintiff shall endorse a concise statement of his claim, but it is not essential to set forth the precise ground of complaint or the precise remedy or relief sought (Form 7).

\*

**Rule 111**

111.—(1) The plaintiff shall state the nature of his claim and the relief sought in a pleading to be called the "statement of claim" and may therein alter, modify or extend his claim as endorsed upon the writ.

(2) [Revoked, O. Reg. 107/74, s. 2.]

Note [Revoked, O. Reg. 36/73, s. 16.]

NOTES**16.04 By Notice of Application**

Where a statute or rule authorizes an application to the court or a judge without requiring the institution of an action, a Notice of Application (Form 16D) may be used and, in addition thereto, any proceeding may be so commenced where the relief claimed is,

- (a) for the opinion, advice or direction of the court on any question affecting the rights of any person in respect of the administration of the estate of a deceased person or in respect of the execution of a trust;
- (b) for an order directing the executors, administrators or trustees to do or abstain from doing any particular act in respect of any estate or trust for which they are responsible;
- (c) for the removal or replacement of one or more executors, administrators or trustees, or for fixing their compensation;
- (d) for the administration of the estate of a deceased person, or for the execution of a trust by the court;
- (e) for a determination of rights which depend upon the interpretation of a deed, will, contract or other instrument, or upon the interpretation of any statute, order-in-council, regulation, municipal by-law or resolution;

**Rules 11; 607; 611; 612  
Rule 11**

11.—(1) Where by any statute a summary application without the institution of any action may be made to the court or a judge in a manner therein provided, such application may also be made by originating notice but any security required by such statute shall be given.

(2) This rule applies to proceedings which by any statute or rule may be taken in a county court or before a judge of a county court.

**Rule 607**

607. The executors or administrators of a deceased person or any of them, and the trustees under any deed or instrument or any of them, or any person claiming to be interested in the relief sought as creditor, devisee, legatee, next of kin or heir at law of a deceased person, or as residuary trustee under the trusts of any deed or instrument, or as claiming by assignment or otherwise under any such creditor or other person as aforesaid, may apply by originating notice for the determination without an administration of the estate or trust of any of the following questions or matters:

1. Any question affecting the rights or interests of the persons claiming to be creditor, devisee, legatee, next of kin or heir at law, or residuary trustee.
2. The ascertainment of any claim of creditors, legatees, devisees, next of kin or others.
3. The furnishing of any particular accounts by the executors or administrators or trustees and the vouching (where necessary) of such accounts.
4. The payment into court of any money in the hands of the executors or administrators or trustees.
5. Directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees.
6. The approval of any sale, purchase, compromise or other transaction.
7. The opinion, advice or direction of a judge pursuant to The Trustee Act.
8. The approval of an arrangement under The Variation of Trusts Act.
9. The determination of any question arising in the administration of the estate or trust.
10. The fixing of the compensation of any executor, administrator or trustee.

**Rule 612**

612.—(1) Where the rights of the parties depend,

- (a) upon the construction of a contract or agreement and there are no material facts in dispute; or
- (b) upon undisputed facts and the proper inference from such facts.

such rights may be determined upon originating notice.

(2) A contract or agreement may be construed before there has been a

**Rule 611**

611. Where the rights of a person depend upon the construction of a deed, will or other instrument, he may apply by originating notice, upon notice to all persons concerned, to have his rights declared and determined.

## CONTINUED

NOTES

- (f) for the declaration of a beneficial interest in, or charge upon land including the nature and extent thereof, or settling the priority of interests or charges;
- (g) for the approval of any arrangement or compromise or for the approval of any purchase, sale, mortgage, lease or variation of trust where such approval is necessary or desirable;
- (h) for the partition or sale of land or any estate or interest therein;
- (i) by way of interpleader;
- (j) for an injunction, mandatory order, declaration or the appointment of a receiver or other consequential relief when ancillary to relief claimed in a proceeding properly commenced by a Notice of Application; or
- (k) in respect of any other matter where it is unlikely that there will be any substantial dispute of fact.

## Rules 11; 607; 611; 612

## Rule 11

11.—(1) Where by any statute a summary application without the institution of any action may be made to the court or a judge in a manner therein provided, such application may also be made by originating notice but any security required by such statute shall be given.

(2) This rule applies to proceedings which by any statute or rule may be taken in a county court or before a judge of a county court.

## Rule 607

607. The executors or administrators of a deceased person or any of them, and the trustees under any deed or instrument or any of them, or any person claiming to be interested in the relief sought as creditor, donee, legatee, next of kin or heir at law of a deceased person, or as cestui que trust under the trusts of any deed or instrument, or as claiming by assignment or otherwise under any such creditor or other person as aforesaid, may apply by originating notice for the determination without an administration of the estate or trust of any of the following questions or matters:

1. Any question affecting the rights or interests of the persons claiming to be creditor, donee, legatee, next of kin or heir at law, or cestui que trust.
2. The ascertainment of any class of creditors, legatees, donees, next of kin or others.
3. The furnishing of any particular accounts by the executors or administrators or trustees and the rouching (where necessary) of such accounts.
4. The payment into court of any money in the hands of the executors or administrators or trustees.
5. Directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees.
6. The approval of any sale, purchase, compromise or other transaction.
7. The opinion, advice or direction of a judge pursuant to The Trustee Act.
8. The approval of an arrangement under The Variation of Trusts Act.
9. The determination of any question arising in the administration of the estate or trust.
10. The fixing of the compensation of any executor, administrator or trustee.

## Rule 612

612.—(1) Where the rights of the parties depend,

- (a) upon the construction of a contract or agreement and there are no material facts in dispute; or
- (b) upon undisputed facts and the proper inference from such facts.

such rights may be determined upon originating notice.

(2) A contract or agreement may be construed before there has been a

## Rule 611

611. Where the rights of a person depend upon the construction of a deed, will or other instrument, he may apply by originating notice, upon notice to all persons concerned, to have his rights declared and determined.

\*\*\*\*\*  
 (2)  
 (3)  
**16.06**  
**16.07 (1)**  
 (2)  
 (3)

#### 16.05 Style of Cause and Content

(1) In an action, the party commencing the action shall be called the plaintiff, and the opposite party, the defendant.

<sup>F</sup> (2) In a Notice of Application, the party commencing the proceeding shall be called the applicant, and the opposite party the respondent; and, where the proceeding is under a particular rule or statute, the style of cause shall be:

"In the matter of (*designating the rule or statute*)  
Between *A.B.*, Applicant, and *C.D.*, Respondent."

(3) Every originating process shall contain the names of the parties and the capacity in which they are made parties to the proceeding, as well as the principal place of residence and the occupation of the party commencing the proceeding.

#### 16.06 How Originating Process Issued

An originating process shall be issued by the registrar dating, signing and sealing it with the seal of the court and assigning to it a court file number. A true copy of the original shall remain in the court file.

#### 16.07 Time for Service

(1) Where an action is commenced by the issuing of a Statement of Claim, it shall be served within six months thereafter.

(2) Where an action is commenced by the issuing of a Notice of Action, the Notice of Action and the Statement of Claim shall be served together within six months of the issuing of the Notice of Action.

(3) A Notice of Application shall be served at least 10 days before the date upon which it is returnable except where the Notice is served out of Ontario; in which case it shall be served at least 20 days before the return date.

#### 16.08 Striking Out or Amending

An originating process which is not a pleading may be struck out or amended in the same manner as a pleading.

Rule 192 (2)  
 Rule 5  
 Rule 5  
 Rules 8; 43  
 Rules 8; 43  
 Rule 217

#### Rule 5

5.—(1) The writ shall be prepared by the plaintiff and shall contain the names of the parties and the capacity in which they sue and are sued and shall state the office in which and the time within which the defendant is to enter his appearance and shall be endorsed with a short statement of the nature of the plaintiff's claim.

(2) Writs shall be sealed with the seal of the Supreme Court or with the seal kept in the local office, as the case may be, and shall conclude with the words "IN WITNESS WHEREOF this writ is signed for the Supreme Court of Ontario by .....  
Registrar of the said Court at Toronto [or by .....]  
Local Registrar of the Said Court at .....]" and shall state the date and place of issue and shall be signed by the officer issuing the same or in his name by a member of his staff to whom the officer has delegated such authority.

(3) A copy of the writ certified by the plaintiff's solicitor shall be filed with the officer at the time the writ is issued.

<sup>X</sup> 192.—(1) In all proceedings in an action, except the writ of summons, pleadings, judgments and reports, the following short style of cause is sufficient:

(2) In proceedings under any particular Act (e.g., The Mechanics' Lien Act), the style of cause shall be: "In the matter of ( *naming the statute*), Between *A.B.*, Plaintiff, and *C.D.*, Defendant (or *A.B.*, Applicant, and *C.D.*, Respondent)".

#### Rule 8

8.—(1) The writ shall be in force for twelve months from the date thereof, including the day of such date, but, if for any sufficient reason any defendant has not been served, the writ may at any time before its expiration, by order, be renewed for twelve months, and so from time to time during the currency of the renewed writ.

(2) The writ shall be marked by the proper officer, "renewed", with the date of the order.

#### Rule 217

217. Except where otherwise expressly provided or unless leave is given, there shall be at least two days between the service of a notice of motion in an action and the day for hearing and at least seven days between the service of an originating notice and the day for hearing. [Amended, O. Reg. 106/75, s. 21.]

#### Rule 43

43. A plaintiff shall deliver his statement of claim.  
 (a) at any time prior to the filing of an appearance or within thirty days thereafter; or  
 (b) where there is more than one defendant within ninety days after the first appearance was filed, or within thirty days after all defendants have appeared, whichever shall first occur. [Amended, O. Regs. 36/73, s. 14; 569/75, s. 2.]

## RULE 17 REPRESENTATION BY SOLICITOR

### 17.01 Where Solicitor is Required

Any party to a proceeding may commence or defend the proceeding in person without being represented by a solicitor unless that party is under disability or is acting in a representative capacity or is a corporation.

### 17.02 Declaration by Solicitor

(1) Any solicitor whose name is endorsed on any originating process shall forthwith upon receipt of a demand in writing from any person who has been served with such process declare in writing whether the proceeding was commenced by him or with his authority, and any solicitor who fails to comply with such a demand may be held in contempt.

(2) Where the solicitor declares that the proceeding was so commenced, he shall also disclose the place of residence and occupation of his client unless the court otherwise orders.

(3) Where the solicitor declares that the proceeding was not so commenced, any other party to the proceeding may apply, without notice, for an order staying or dismissing the proceeding and, where the proceeding is so stayed, no further step therein may be taken without leave of the court.

### Rule 13

13.—(1) The solicitor whose name is endorsed on a writ of summons shall on demand declare forthwith whether the cause or matter has been commenced by him or with his authority or privity, and he shall also, if demanded, disclose the profession or occupation, and place of residence, giving name of street and house number where practicable, of the plaintiff and in default the action may be stayed and the solicitor may be directed to pay the costs.

(2) If the solicitor declares that the writ was not issued by him or with his authority or privity, an order may be obtained ex parte directing that all proceedings be stayed, and thereafter no further proceedings shall be taken without leave.

NOTES

17.03(1)  
 (2)  
 (3)

Rule 390  
 Rule 391  
 Rule 392

**17.03 Change in Representation****(1) Notice of Change of Solicitor**

A party represented by a solicitor may change his solicitor by serving on his former solicitor and upon every other party to the proceeding a notice to that effect.

**(2) Notice of Appointment of Solicitor**

A party representing himself in a proceeding may appoint a solicitor to represent him, in which case he shall forthwith serve upon every other party to the proceeding a notice to that effect.

**(3) Notice of Intention to Act in Person**

Subject to Rule 17.01, a party represented by a solicitor may elect to represent himself in a proceeding by serving upon his solicitor and upon every other party to the proceeding a notice to that effect.

**(4) Effect of Notice**

Until any such notice has been filed with proof of service, any other party to the proceeding may continue or defend the proceeding without regard to the notice.

**Rule 390**

390. A party suing or defending by a solicitor may change his solicitor by filing and serving a notice to that effect.

**Rule 391**

391. A party suing or defending in person and desiring to be represented by a solicitor may file and serve a notice to that effect.

**Rule 392**

392. A party represented by a solicitor and desiring to sue or defend in person may file and serve a notice to that effect.

17.04(1)  
(2)  
(3)  
(4)

Rule 394(1)  
Rule 394(1)  
Rule 394(1)  
Rule 394(1)

- 17.04 Application by a Solicitor to be Removed from the Record**
- (1) A solicitor may apply at any time for an order removing himself from the record.
- (2) Notice of any such motion shall be served upon his client and upon every other party to the proceeding.
- (3) The client may be served by mailing a copy of the Notice of Motion addressed to him at his last known address.
- (4) The solicitor shall remain the solicitor of record for his client with all the responsibilities pertaining thereto, until an order removing him from the record has been entered, and the time for any appeal therefrom has expired, or until the client has served and filed with proof of service a notice pursuant to Rule 17.03, whichever shall first occur.

Rule 394

394.—(1) Where a solicitor who has acted for a party in a cause or matter has ceased to act and the party has not given notice of change of solicitor in accordance with the preceding rules, the solicitor may on notice to be served on the party personally or by prepaid ordinary mail addressed to his last known place of address, unless the court otherwise directs, apply to the court for an order to the effect that the solicitor has ceased to be the solicitor acting for the party in the cause or matter, and the court may make an order accordingly; provided that, unless and until the solicitor has,

- (a) served a copy of the order upon the party for whom he has ceased to act personally or otherwise as the court may direct; and
- (b) served a copy of the order on every other party to the cause or matter (not being a party in default as to entry of appearance); and
- (c) filed in the office in which the cause or matter was commenced a copy of the order together with an affidavit showing that the order has been duly served as aforesaid,

he shall, subject to rules 390, 391 and 392, be considered the solicitor of the party to the final determination of the cause or matter whether in the High Court or the Court of Appeal. (Amended, O. Reg. 307/72, s. 4(a).)

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 (5)  
 (6)  
 17.05

Rules 393(2); 394(2)  
 Rules 393(3); 394(3)  
 Rule 393(1)

## NOTES

### CONTINUED

(5) Where a solicitor has ceased to be the solicitor of record for any party to a proceeding, any document in the proceeding required to be served on that party may be served by mailing a copy addressed to him at his last known address, unless or until that party has served and filed with proof of service a notice pursuant to Rule 17.03.

(6) Any order made under this rule does not otherwise affect the rights of the solicitor and the party for whom he acted as between themselves.

#### 17.05 Where a Solicitor of Record has Ceased to Practise

Where a solicitor of record for a party to a proceeding has, for any reason, ceased to practise law, and the party for whom he has acted has failed to serve a notice pursuant to Rule 17.03, any other party to the proceeding may serve any subsequent document by mailing the same addressed to that party at his last known address or may apply to the court for directions.

#### Rule 393

393.—(1) Where a solicitor who has acted for a party in a cause or matter has died or cannot be found, or has been struck off the roll of solicitors, or has been suspended from practice, and the party has not given notice of change of solicitor or notice of intention to act in person in accordance with the preceding rules, any other party to the cause or matter may, on notice to be served on the first-named party personally or by prepaid post letter addressed to his last known place of address, unless the court otherwise directs, apply to the court for an order declaring that the solicitor has ceased to be the solicitor acting for the first-named party in the cause or matter and the court may make an order accordingly.

(2) Where the order is made, the party applying for the order shall serve on every other party to the cause or matter (not being a party in default as to entry of appearance) a copy of the order and also leave at the office in which the cause or matter was commenced a copy of the order together with an affidavit showing that the order has been duly served as aforesaid and thereafter, unless and until the first-named party either appoints another solicitor or else gives such an address for service as is required of a party acting in person and complies with the preceding rules relating to the notice of appointment of a solicitor or notice of intention to act in person, any document in respect of which personal service is not requisite may be served on the party so in default by mailing it to the party at his address given in the writ or appearance, as the case may be, by registered letter.

(3) Any order made under this rule does not affect the rights of the solicitor and the party for whom he acted as between themselves.

#### SECTION 394

(2) From and after the time when the order has been filed as required by clause c of subrule 1, any document in respect of which personal service is not requisite may be served on the party to whom the order relates by mailing it to the party at his last known address, by prepaid ordinary mail, unless and until that party shall either appoint another solicitor or give an address for service as is required of a party acting in person, and shall also comply with rules 390, 391 and 392 relating to notice of appointment of a solicitor or notice of intention to act in person. (Amended, O. Reg. 307/72, s. 4(b).)

(3) Any order made under this rule does not affect the rights of the solicitor and the party as between themselves.

NOTES**RULE 18 SERVICE OF PROCESS****18.01 When Personal Service is Necessary****(1) *Originating Process***

- (a) Every originating process shall be served personally unless otherwise provided by any statute or by these rules.
- (b) An originating process need not be served on any party who has delivered a defence thereto without being served.

**(2) *Other Documents***

No other document need be served personally unless such service is expressly required by any statute, or these rules, or by order of the court.

**Rule 16**

16.—(1) Except as hereinafter provided, in the absence of such acceptance of service every writ of summons shall be served personally, but, if it appears that the plaintiff is unable to effect prompt personal service, substituted service, by advertisement or otherwise, may be ordered.

## NOTES

**18.02 How Personal Service Shall be Made**

- (1) Personal service shall be made as follows:
  - (a) *Individual.* On an individual, other than a person under disability, by leaving a copy of the document with him.
  - (b) *Municipal Corporation.* On a municipal corporation, by leaving a copy of the document with the chairman, mayor, warden, reeve, or with the clerk of the municipality or his deputy or with any solicitor for the municipality.
  - (c) *Other Corporation.* On any other corporation, by leaving a copy of the document with any officer, director, or any agent thereof, or the manager or person in charge of any office or other place where the corporation carries on business in Ontario.
  - (d) *Board or Commission.* On any board or commission, by leaving a copy of the document with any member thereof or with the secretary of the board or commission.
  - (e) *Person out of Ontario Carrying on Business in Ontario.* Any person out of Ontario who carries on business in Ontario may be served in Ontario by leaving a copy of the document with any person carrying on such business for him in Ontario.
  - (f) *Crown in Right of Ontario.* On her Majesty the Queen in right of Ontario by leaving a copy of the document with any solicitor in the Crown Law Office of the Ministry of the Attorney General.

**Rule 23**

23.—(1) A municipal corporation may be served with a writ of summons by delivering a copy to the chairman, mayor, warden, reeve, or clerk thereof.

(3) Any other corporation may be served with a writ of summons by delivering a copy to the president or other head officer, vice-president, secretary, treasurer, director, or any agent thereof, or the manager or person in charge of any branch or agency thereof in Ontario. Any person who, within Ontario, transacts or carries on any of the business of, or any business for, a corporation whose chief place of business is out of Ontario shall, for the purpose of being served as aforesaid, be deemed to be the agent thereof.

(4) Service may also be effected on any person appointed for that purpose under the provisions of any statute. [Amended, O. Reg. 520/71.]

(CONTINUED)

(iii)

(g) *Crown in Right of Canada.* On her Majesty the Queen in Right of Canada by leaving a copy of the document with any solicitor in the office of the Deputy Minister of Justice in the City of Ottawa, or with the Director of the Regional Office of the Department of Justice of Canada in the City of Toronto.

(h) *Persons Under Disability.*

(i) *Absentee.* On an absentee by leaving a copy of the document with his committee, if one has been appointed or, if not, with the Public Trustee.

(ii) *Minor.* On a minor by leaving a copy of the document with the minor and, where he resides with or in the care of his father, mother, guardian or other adult, by leaving another copy of the document with such person; unless the proceeding is against a minor in respect of his interest in an estate or trust, in which case he shall be served by leaving with the Official Guardian a copy of the document on which shall be endorsed the name and address of the minor.

(iii) *Mental Incompetent.* On a person who has been declared mentally incompetent or incapable of managing his own affairs by leaving a copy of the document with the committee of his estate or, where there is no such committee, with the committee of his person. Where a person is mentally incompetent or incapable of managing his own affairs, not so declared, by leaving a copy of the document with such person and with his committee, if there is one, or, if not, by leaving a copy of the document with the Public Trustee, upon which shall be endorsed the name and address of the person under disability.

Rules 18(1), 12(1); 19; 20  
Rule 21

## Rule 18

18.—(1) Where an infant is sued in respect of his interest in an estate, he shall be served by delivering a copy of the writ to the Official Guardian.

(2) The post office address of the father or guardian of such infant or of the person with whom or under whose care the infant is shall be endorsed on the copy of the writ so served.

## Rule 19

19. Where the action against an infant defendant is for the recovery of lands, goods or chattels of which he is personally in possession, service shall be made on the infant personally, and a copy of the writ endorsed as aforesaid shall also be delivered to the Official Guardian who may enter an appearance for the infant, in the absence of other order or direction.

## Rule 20

20. Where the action is against an infant in respect of a personal tort or for the recovery of money only, the infant shall be served as in the case of an adult defendant.

## Rule 21

21. Where a mentally incompetent person or person of unsound mind not so found by inquisition or judicial declaration is a defendant, service on the committee of the mentally incompetent person or on the person with whom the defendant of unsound mind resides, or under whose care he is, shall, unless otherwise ordered, be deemed good service.

NOTE: As to service on a mentally incompetent person in an institution, see Part III of the Mental Health Act, R.S.O. 1970, c. 269.

## CONTINUED

- (i) *Partnerships.* On a partnership by leaving a copy of the document with one or more of the partners or with any person at the principal place of business of the partnership who appears to be in control or management thereof.
  - (j) *Sole Proprietorship.* On a sole proprietorship by leaving a copy of the document with the sole proprietor or with any person at the principal place of business of the sole proprietorship who appears to be in control or management thereof.
  - (k) *Unincorporated Associations.* On an unincorporated association by leaving a copy with any officer of the association or with any person at any office or premises occupied by the association who appears to be in control or management thereof.
- (2) When effecting service of any document, it shall not be necessary for the process server to produce the original document or have it in his possession.

(i)  
(j)  
(2)

Rule 103  
Rule 110(2)  
Rule 205

## Rule 103

(93. Where persons are sued as partners in the name of the firm, the writ shall be served either upon any one or more of the partners, or at the principal place within Ontario of the business of the partnership, upon any person having the control or management of the partnership business there; and such service shall be deemed good service upon the firm whether any of the members thereof are out of Ontario or not, but, in the case of a partnership that has been dissolved to the knowledge of the plaintiff before action, the writ of summons shall be served upon every person within Ontario sought to be made liable, and every person so

served shall be informed by notice in writing given at the time of service whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters, and in default of such notice the person served shall be deemed to be served as a partner.

## SECTION 110

(2) The writ may be served upon the person so carrying on the business if he be within Ontario, or at the place of business within Ontario (or if there are several such places, at the places within the county in which the cause of action arose), upon any person having the control or management of the business there.

## Rule 205

205. It is not necessary to regular service that the original document be shown, unless sight thereof is demanded.

**18.03 Alternatives to Personal Service****(1) Where Available**

Where personal service is required by these rules, with the exception of Rules 33.03 and 55.03, the methods of service authorized by this sub-rule may be used as an alternative thereto.

**(2) Service on Solicitor**

Any party who is represented by a solicitor may be served by leaving a copy of the document with his solicitor, provided the solicitor endorses on a copy thereof his acceptance of such service and the date of his acceptance. By so doing, the solicitor shall be deemed to represent to the court that he has the authority of his client to accept such service.

## Rule 15

15. Service of a writ of summons shall not be required where the defendant by his solicitor endorses on the original writ his acceptance of service and his undertaking to appear. [Amended, O. Reg. 36/73, s. 2.]

NOTESCONTINUED**(3) Service by Certified Mail**

- (a) Where personal service of any document may be made by leaving a copy thereof with any person pursuant to Rule 18.02 (1), such service may be made anywhere in Ontario by sending a copy thereof, together with an Acknowledgement of Receipt Card (Form 18A) by certified mail addressed to such person at his last known address.
- (b) Service by certified mail shall be deemed to have been effected only where the Acknowledgement of Receipt Card or a post office receipt, bearing a signature which appears to be the signature of the person to be served, is returned to and received by the sender.
- (c) Service by certified mail shall be deemed to have been effected on the date the sender first receives either receipt, duly signed, as provided in clause (b).

**(4) Service at Place of Residence**

Where an attempt is made to personally serve any person at his place of residence and for any reason such service cannot be effected, the document may be served on such person by leaving a copy thereof, in a sealed envelope addressed to him, with any person who appears to be an adult and a member of his household and on the same day mailing another copy of the document addressed to the person to be served at his place of residence.

**(5) Service on a Corporation**

Where the head office or principal place of business of a corporation or, in the case of an extra-provincial corporation, the attorney for service in Ontario, cannot be found at the last address recorded with the Ministry of Consumer and Commercial Relations, the corporation may be served by mailing a copy of the document addressed to the corporation or to the attorney for service in Ontario, as the case may be, at that address and by mailing a copy of the document to that Ministry.

Rule 23

(4) Service may also be effected on any person appointed for that purpose under the provisions of any statute. [Amended, O. Reg. 520/71, s. 1.]

NOTES

18.04  
18.05(a)  
(b)

**18.04 Substituted Service**

Where personal service of a document is required by these rules, and it appears to the court that it is impractical for any reason to effect prompt personal service of that document, the court may make an order for substituted service thereof, or where necessary in the interests of justice, dispense with such service.

**18.05 Where Personal Service Not Required**

Any document which is not required to be served personally,

- \* (a) shall be served upon a party to a proceeding, where he has a solicitor of record, by serving that solicitor, and such service may be effected by mailing a copy of the document addressed to the solicitor at his office; and
- (b) may be served upon a party to a proceeding who has no solicitor of record, or upon a person who is not a party to the proceeding, by mailing a copy of the document addressed to him at the last address for service furnished by him, or, if no such address has been furnished, at his last known address.

**Rule 16**  
**Rule 201(1), (2)**  
**Rule 202(1),(2)**

**Rule 16**

16.—(1) Except as hereinafter provided, in the absence of such acceptance of service every writ of summons shall be served personally, but, if it appears that the plaintiff is unable to effect prompt personal service, substituted service, by advertisement or otherwise, may be ordered.

(2) Substituted service may also be allowed of any other document that requires personal service.

**Rule 201**

201.—(1) Documents that do not require personal service shall be served upon the solicitor of the party to be served.

(2) Such service may be made by leaving the document to be served with a clerk in the solicitor's office or by ordinary mail to such solicitor's office, by properly addressing, prepaying and posting an envelope with a return address thereon, containing the document to be served, or by depositing the document to be served at a document exchange of which the solicitor of the party to be served is a member or subscriber, provided that the original and a true copy of the document to be served are date-stamped at the document exchange in the presence of the person depositing the document. [Amended, O. Regs. 285/71, s. 2(b); 933/79, s. 1.]

**Rule 202**

202.—(1) Where a party sues or defends in person and no address for service of such party is given, or where a defendant served with a writ of summons or notice in lieu thereof has not appeared thereto, no document that does not require personal service need be served unless the court otherwise directs.

(2) If an address for service upon a party is given, all documents are sufficiently served upon such party if mailed to him at his address for service, and the method of mail and the time at which he shall be deemed to have been served shall be as in rule 201. [Amended, O. Reg. 285/71, s. 3(a).]

\*

**Rule 201.**

(4) Where a document has been deposited at a document exchange pursuant to sub-rule (2), the document, unless the contrary is shown, shall be deemed to have been served on the next judicial day following that on which it was so deposited and date-stamped. [New, O. Reg. 933/79, s. 2.]

18.06  
18.08

Rule 201(3)  
Rule 201(3)

\* 18.06 Service by Mail

Where the mailing of a document is authorized or required by these rules, the document is to be sent by prepaid first class mail and, except as provided by Rule 18.03 (3)(c), service thereof shall be deemed to have been effected on the fifth day following the date of mailing.

18.07 Service on Solicitor of Record

(1) Where service of a document on the solicitor of record for a party is authorized or required by these rules, the document may also be served by leaving a copy thereof with a clerk in the office of the solicitor or by depositing a copy thereof at a document exchange of which the solicitor is a member or subscriber, provided that the original and the copy of such document are date stamped by the document exchange in the presence of the person depositing the document.

(2) Where a copy of a document has been deposited at a document exchange pursuant to paragraph (1), the document shall be deemed to have been served on the next day, that is not a holiday, following that upon which it was deposited and date stamped.

\* 18.08 Deemed Service Not Conclusive

Notwithstanding the fact that by these rules a person is deemed to have been served with any particular document, the contrary may be shown on any motion made by him to set aside the consequences of his default, or on any motion for the adjournment of a proceeding, or for an extension of time.

RULE 201

(3) Where a document has been mailed pursuant to sub-rule (2), the document, unless the contrary is shown, shall be deemed to have been served on the fourth day following that on which it was so mailed. [New, O. Reg. 285/71, s. 2(b).]

\* Rule 201-

(4) Where a document has been deposited at a document exchange pursuant to sub-rule (2), the document, unless the contrary is shown, shall be deemed to have been served on the next juridical day following that on which it was so deposited and date-stamped. [New, O. Reg. 933/78, s. 2.]

**18.09 Validating Service**

Where a document has been served by some method not authorized by these rules or by an order of the court, or where there has been some irregularity in the service thereof, the court may make an order validating the service on such terms as may seem just, where the court is satisfied that,

- (a) the document came to the notice of the person sought to be served; or
- (b) the document was so left that it would have come to the notice of the person sought to be served, except for his own attempts to evade service.

**18.10 Proof of Service**

(1) The service of any document may be proved by an affidavit of the person effecting such service (Form 18B).

(2) The personal service of any document by a sheriff or his officer may be proved by a Certificate of Service (Form 18C) endorsed on a copy of the document served.

(3) The written admission or acceptance of service by a solicitor is sufficient proof of service and need not be verified by an affidavit.

(4) The service of any document by depositing a copy thereof at a document exchange in accordance with the provisions of Rule 18.07 may be proved by the date stamped on the original by the document exchange.

**Rule 271**

271. Service of any notice may, in the absence of an admission of service, be proved by an affidavit of the solicitor in the cause, or his clerk.

**Rule 200**

200. Admissions and acceptances of the service of an order, notice of motion or other paper, upon the opposite solicitor, need not be verified by affidavit.

## 19.01

- (a)
- (b)
- (c)
- (d)
- (e)

**RULE 19 SERVICE OUT OF ONTARIO****19.01 Service Out of Ontario Without Leave**

A party to a proceeding may, without a court order, be served out of Ontario with an originating process where the proceeding against that party consists of a claim or claims,

- (a) in respect of real property situate within Ontario, or the administration of the estate of a deceased person in respect of such property;
- (b) in respect of personal property situate within Ontario, or the administration of the personal property of a deceased person who, at the time of his death, was resident within Ontario;
- (c) for the construction, rectification, enforcement or setting aside of any deed, will, contract or obligation in respect of real or personal property situate within Ontario, or in respect of the personal property of a deceased person who, at the time of his death, was resident within Ontario;
- (d) against a trustee in respect of the execution of a trust contained in a written instrument where the assets of the trust include real or personal property situate within Ontario;
- (e) for foreclosure, sale, possession or redemption in respect of a mortgage, charge or lien on real or personal property situate within Ontario;

**Rule 25**

- Rule 25 (1) (a)
- Rule 25 (1) (b)
- Rule 25 (1) (c)
- Rule 25 (1) (d)
- Rule 25 (1) (e)

**Rule 25**

The following notice was published by the Rules Committee as an explanation of the changes made in 1975 to the rules under the heading:

1. An order permitting service out of Ontario is no longer required and the time for appearance and for defence is now prescribed by the rules. Rule 25 sets out the situations in which service out of Ontario is permitted without an order.

2. Rule 25 has been re drafted to simplify the language of the old rule and to extend the scope thereof by two notable innovations. Service out of Ontario may now be made where the action or proceeding consists of a claim or claims,

- (a) for damages sustained in Ontario arising from a tort or breach of contract committed elsewhere; and
- (b) for contribution, indemnity or other relief over in respect of any claim made against a defendant in an action commenced in Ontario.

3. A party may now be served out of Ontario without regard to whether or not he is a British subject and whether or not he is in a British Dominion.

4. Service on a party out of Ontario will now be effected by serving upon him a notice entitled "Notice for Service Out of Ontario". This notice is designed to eliminate altogether the service out of Ontario of a writ of summons, whether generally or specially endorsed, a summons to a defendant added by counterclaim, a third party notice or an originating notice of motion, as the case may be.

5. A party who has been served out of Ontario, may, within the time limited for appearance and before appearing, apply for an order setting aside the service or, in the alternative, for leave to file a conditional appearance.

25.—(1) Subject to rule 786, a party to an action or proceeding may be served out of Ontario as provided by rule 28 where the action or proceeding as against that party consists of a claim or claims

- (a) for, or in respect of, real property situate within Ontario, or the administration of the estate of a deceased person in respect thereof, whether the deceased died testate or intestate as to such property;
- (b) for, or in respect of, personal property situate within Ontario, or the administration of the personal property of a deceased person who, at the time of his death was domiciled within Ontario, whether the deceased died testate or intestate as to such property;
- (c) for the construction of a will in respect of real or personal property situate within Ontario or in respect of the personal property of a deceased person, who at the time of his death was domiciled within Ontario;
- (d) against a trustee for, or in respect of, the execution of a trust contained in a written instrument where the trust is in respect of real or personal property situate within Ontario and ought to be executed according to the law of Ontario;
- (e) for foreclosure, sale, possession or redemption in respect of a mortgage, charge or lien on real or personal property situate within Ontario;

(f)		Rule 25(1) (f)
(i)	new	
(ii)	new	
(iii)	new	
(iv)	Rule 25(1) (f) (ii)	
(v)	Rule 25(1) (f) (i)	
(g)	Rule 25(1) (g)	
(h)	Rule 25(1) (h)	

## CONTINUED

- (f) in respect of a contract where,
- (i) the contract was made within Ontario;
  - (ii) the contract was made by or through an agent trading or residing within Ontario on behalf of a principal trading or residing out of Ontario;
  - (iii) the contract provides that it is to be governed by or interpreted in accordance with the laws of the Province of Ontario;
  - (iv) the parties thereto have agreed that the courts of Ontario shall have jurisdiction to entertain any action in respect of the contract; or
  - (v) a breach has been committed within Ontario, even though such breach was preceded by or accompanied by a breach out of Ontario which rendered impossible the performance of that part of the contract which ought to have been performed within Ontario;
- (g) in respect of a tort committed within Ontario;
- (h) in respect of damage sustained in Ontario arising from a tort or breach of contract wherever committed;

## RULE 25 CONTINUED

- (f) In respect of a contract wherever made where,
- (i) a breach is alleged to have been committed within Ontario, even though such breach was preceded by or accompanied by a breach out of Ontario which rendered impossible the performance of that part of the contract which ought to have been performed within Ontario; or
  - (ii) the parties thereto have agreed that the courts of Ontario shall have jurisdiction to entertain the action;
- (g) In respect of a tort committed within Ontario,
- (h) in respect of damage sustained in Ontario arising from a tort

## NOTES

## CONTINUED

- (i) for an injunction ordering any such party to do, or refrain from doing, anything within Ontario or affecting real or personal property situated within Ontario;
- (j) for support;
- (k) for the custody of, or access to a minor;
- (l) to declare the invalidity of a marriage;
- (m) upon a judgment of a foreign court;
- (n) which, by any statute, may be made against a person out of Ontario by a proceeding commenced in Ontario; (e.g. *The Carriage by Air Act*; *The Business Corporations Act*);
- (o) against a person out of Ontario who is a necessary or proper party to a proceeding properly brought against another person duly served within Ontario;
- (p) against a person domiciled or ordinarily resident within Ontario, or carrying on business there;
- (q) properly the subject matter of a cross-claim or a third party claim under these rules;
- (r) made by or on behalf of the Crown or any municipal corporation to recover monies owing for taxes or other debts due to the Crown or to the municipality.

- (i)
  - (j)
  - (k)
  - (l)
  - (m)
  - (n)
  - (o)
  - (p)
  - (q)
  - (r)
- Rule 25(1)(i)
  - Rule 25(1)(j)
  - Rule 25(1)(k)
  - Rule 25(1)(l)
  - Rule 25(1)(m)
  - Rule 25(1)(n)
  - Rule 25(1)(o)
  - Rule 25(1)(p)
  - Rule 25(1)(q)
  - new

## CONTINUED

- or breach of contract committed elsewhere;
- (i) for an injunction in respect of anything done, being done or to be done within Ontario;
  - (j) for support under The Family Law Reform Act, 1978;
  - (k) for custody of or access to an infant;
  - (l) to declare a marriage void;
  - (m) founded upon a judgment;
  - (n) which, by statute, may be made by an action or proceeding commenced in Ontario;
  - (o) against a person out of Ontario who is a necessary or proper party to an action or proceeding properly brought against another person duly served within Ontario;
  - (p) against a person domiciled or ordinarily resident within Ontario;
  - (q) for contribution, indemnity or other relief over in respect of any claim made in an action or proceeding commenced in Ontario.

NOTES

19.02(1)  
 (2)  
 19.03(1)  
 (2)

new - compare 25(2)  
 new  
 Form 3  
 new

## CONTINUED

**19.02 Service Out of Ontario With Leave**

(1) The court may in any case grant leave to serve an originating process or any other document outside Ontario where one or more of the parties reside within Ontario and such service appears necessary to secure the just determination of a civil proceeding affecting any such party or parties.

(2) A motion for leave to serve a party outside Ontario may be made without notice, and shall be supported by an affidavit or other evidence showing in which place or country that person is or probably may be found, and the grounds upon which the motion is made.

**19.03 Additional Requirements for Service Out of Ontario**

(1) Any originating process served out of Ontario without leave shall disclose the facts, and specifically refer to the provisions of this rule, relied upon in support of such service.

(2) Where an originating process is served out of Ontario with leave of the court, there shall be served with the originating process a copy of the order granting such leave, and a copy of any affidavit used to obtain the order.

(2) Any person not already a party to an action or proceeding may, by leave of the court, be served out of Ontario with any judgment or order or notice to prove claims thereunder. [Amended, O. Regn. 106/75, s. 4; 876, s. 1; 216/78, s. 1.]

19.04 (1)  
19.05 (1)

**19.04 Manner of Service Out of Ontario**

(1) An originating process or other document to be served out of Ontario may be served in the manner provided by these rules for service in Ontario, or in the manner prescribed by the law of the foreign jurisdiction, provided such service is reasonably calculated to give actual notice.

(2) Proof of service may be made in the manner prescribed by these rules for proof of service in Ontario or in the manner provided by the law of the jurisdiction where service was made.

**19.05 Motion to Set Aside Service Out of Ontario**

(1) A party who has been served out of Ontario with an originating process without leave may apply to the court, within the time limited for delivering any pleading or affidavit in defence thereto and before delivering any such defence,

(a) for an order setting aside such service or staying the proceeding; or

(b) for leave to dispute the jurisdiction of the court in his pleading or affidavit in defence of the proceeding.

(2) An order may be made under paragraph (1) on the ground that service out of Ontario is not authorized by these rules or that Ontario is not a convenient forum for the trial or hearing of the proceeding.

(3) A party who has been served out of Ontario with an originating process with leave may apply to the court, within the time limited for the delivery of any pleading or affidavit in defence thereto and before delivering any such defence, to set aside the order granting such leave.

(4) If on a motion under paragraph (1) the court concludes that service out of Ontario is not authorized by these rules, but the case is one in which it would be appropriate to grant leave to serve out of Ontario under Rule 19.02, the court may validate the service.

**Rule 30**  
**Rules 29; 38**

**Rule 29**

29. A party who has been served out of Ontario with a notice according to Form 3 may, within the time limited for appearance and before appearing, apply for an order setting aside the service of such a notice upon him, or in the alternative, for leave to file a conditional appearance. (Amended, O. Reg. 106/75, s. 8.)

**Rule 38**

38. Where he has obtained leave to do so, a defendant may file a conditional appearance which shall be according to Form 9. (Amended, O. Regs. 38/73, s. 14; 106/75, s. 11.)

NOTE: For a summary of the 1973 amendments see the note preceding Rule 35. (See also cases under Rule 29 —Ed.)

**Rule 30**

30. Where service is to be effected upon a person, other than a British subject, in a foreign country to which this rule is by direction of the Chief Justice of Ontario made to apply, the following procedure shall be adopted:

t. The notice according to Form 3 and any other document required to be served therewith shall be transmitted by the Registrar of the Supreme Court to the Under-Secretary of State for External Affairs for Canada with a copy thereof, translated into the language of the country in which service is to be effected, with a request for further transmission of the same to the government of the country in which it is to

20.01 (a)  
 (b)  
 (c)  
 20.02 (1)

Rule 44  
 Rule 28  
 Rule 28  
 Rule 35; 36

## RULE 20 TIME FOR DELIVERY OF STATEMENT OF DEFENCE

### 20.01 Time for Delivery of Statement of Defence

Subject to Rule 20.02, a Statement of Defence (Form 20A) shall be delivered,

- (a) within 20 days after service of the Statement of Claim where the defendant is served in Ontario;
- (b) within 40 days after service of the Statement of Claim where the defendant is served elsewhere in Canada or within the United States of America; or
- (c) within 60 days after service of the Statement of Claim where the defendant is served anywhere else in the world.

### 20.02 Notice of Intent to Defend

(1) Any defendant served with a Statement of Claim who intends to defend the action may, within the time limited for the delivery of his Statement of Defence, serve upon the plaintiff and file, with proof of service, a Notice of Intent to Defend (Form 20B).

(2) Any defendant who serves and files a Notice of Intent to Defend within the time prescribed for so doing, shall be entitled to an additional 10 days within which to deliver his Statement of Defence, and he shall be deemed to have attorned to the jurisdiction of the court.

### Rule 44

44. Unless otherwise provided a defendant shall deliver his statement of defence and counter-claim, if any, within twenty days after the delivery of the statement of claim. (Amended, O. Regs. 36/73, s. 14; 106/75, s. 12.)

### Rule 28

28.—(1) Where a party is served out of Ontario but elsewhere in Canada or within one of the United States of America, he shall file an appearance within forty days, excluding the day of service, and, within the same time, he shall deliver his statement of defence or his affidavit of merits, as the case may be.

(2) Where a party is served elsewhere than in Canada or one of the United States of America, he shall file an appearance within sixty days, excluding the day of service, and, within the same time, he shall deliver his statement of defence or his affidavit of merits, as the case may be. (Amended, O. Reg. 106/75, s. 7.)

### Rule 35

35.—(1) Unless otherwise ordered, or provided, where a defendant is served with a generally endorsed writ of summons, he shall file an appearance within ten days, and in the case of a specially endorsed writ within fifteen days, excluding the day of service.

(2) Unless otherwise ordered, or provided, where a summons to a defendant added by counterclaim is served, the added defendant shall file an appearance within twenty days, excluding the day of service.

(3) Unless otherwise ordered, or provided, where a respondent is served with an originating notice of motion, he shall file an appearance on or before the date upon which the motion is returnable.

(4) A defendant may file an appearance after the time limited by this rule,

- (a) in an action where the writ is specially endorsed, at any time before judgment; and
- (b) in an action where the writ is generally endorsed, at any time before pleadings are noted closed. (Amended, O. Reg. 36/73, s. 14; 106/75, s. 10.)

### Rule 36

36. An appearance shall be according to Form 9 and shall be filed in the office in which the proceeding was commenced, and where the defendant or respondent appears by solicitor shall state the name and place of business of such solicitor, or if he appears in person shall name a place within Ontario to be called his address for service, and the defendant or respondent shall forthwith serve the appearance upon the plaintiff or applicant, as the case may be. (Amended, O. Reg. 36/73, s. 14.)

**RULE 21 DEFAULT PROCEEDINGS****21.01 Noting Default**

\*(1) Where a defendant fails to deliver his Statement of Defence and the time for so doing has expired, the plaintiff may, upon filing proof of service of the Statement of Claim, require the registrar to note the default of such defendant.

(2) Where the Statement of Defence of a defendant has been struck out without leave to deliver another, or with leave to do so and the defendant has failed to deliver another within the time allowed, the plaintiff may require the registrar to note the default of such defendant upon filing a copy of the order striking out the Statement of Defence.

(3) Where the plaintiff has failed to require the registrar to note a defendant in default, any other defendant who has delivered a Statement of Defence and wishes to set the action down for trial may, on notice to the plaintiff, apply for leave to require the noting of such default.

(4) Until a defendant has been noted in default, he shall be entitled to deliver his Statement of Defence.

**Rule 39**

39. Where a writ is endorsed to recover a money demand and a defendant desires to dispute only the amount claimed and to make no other defence, he may file an appearance according to Form 9, and the plaintiff, on four clear days' notice to the defendant, may have an account taken before the registrar and judgment may be signed for the amount found due. [Amended, O. Reg. 36/73, s. 14.]

NOTE: For a summary of the 1973 amendments see the note preceding Rule 35.

**Rule 55**

55.—(1) Where a defendant is in default in delivering his statement of defence and the plaintiff is not entitled to sign judgment, the plaintiff may require the registrar to note the pleadings closed and thereafter no statement of defence by the party in default shall be delivered without leave of the court.

(2) Pleadings shall not be noted closed unless a statement of claim has been delivered.

**\*Rule 49**

49.—(1) Before any proceeding may be taken for default of appearance, the plaintiff shall file an affidavit of service of the writ upon the defendant in default, or the original writ upon which is endorsed the acceptance of service and the undertaking to appear given by a solicitor according to rule 16.

(2) Before any proceeding may be taken for default of defence, the plaintiff shall file proof of service of the statement of claim upon the defendant in default, and, where no appearance has been filed, sub-rule (1) shall also be complied with. [Amended, O. Regs. 36/73, s. 14; 107/74, s. 1.]

21.02 (1)  
(b)  
(2)

Rule 55(4)  
Rule 55(1)  
Rule 202(1)

#### 21.02 Consequences of Noting Default

- (1) A defendant who has been noted in default,
- (a) shall be deemed to admit the truth of all allegations of fact made in the Statement of Claim; and
  - (b) shall not deliver a Statement of Defence or take any other step in the proceeding, without leave of the court or the consent of the plaintiff, except a motion to set aside any judgment obtained against him by reason of his default.
- (2) Notwithstanding the provisions of any other rule, any step in the proceeding may be taken without the consent of a defendant who has been noted in default, and he shall not be entitled to notice of any step in the proceeding and need not be served with any other document therein except,
- (a) as provided in Rules 27, 28, 29 and 30; or
  - (b) where any party requires his personal attendance; or
  - (c) where otherwise ordered.

#### Rule 55

66.—(1) Where a defendant is in default in delivering his statement of defence and the plaintiff is not entitled to sign judgment, the plaintiff may require the registrar to note the pleadings closed and thereafter no statement of defence by the party in default shall be delivered without leave of the court.

(4) A defendant against whom the pleadings have been noted closed for default in delivering his statement of defence shall be deemed to admit all the allegations of fact made in the statement of claim and, unless otherwise ordered, shall not be entitled to notice of motion for judgment or to notice of trial or to notice of any other proceedings. [Amended, O. Reg. 3673, s. 14; 569/75, s. 3.]

#### Rule 202

202.—(1) Where a party sues or defends in person and no address for service of such party is given, or where a defendant served with a writ of summons or notice in lieu thereof has not appeared thereto, no document that does not require personal service need be served unless the court otherwise directs.

(2) If an address for service upon a party is given, all documents are sufficiently served upon such party if mailed to him at his address for service, and the method of mail and the time at which he shall be deemed to have been served shall be as in rule 201. [Amended, O. Reg. 285/71, s. 3(a).]

(3) Revoked, O. Reg. 285/71, s. 3(b).]

NOTES**21.03 Setting Aside the Noting of Default**

The noting of default may be set aside by the court at any time on such terms as may seem just.

**21.04 By Signing Default Judgment**

(1) After the noting of default, a plaintiff may require the registrar to sign judgment against a defendant noted in default in respect of a claim for,

- (a) a debt or a liquidated demand in money (Form 21A);
- (b) the recovery of possession of land (Form 21B);
- (c) the recovery of chattels (Form 21C); or
- (d) foreclosure, sale or redemption of a mortgage. (See Forms prescribed by Rule 65).

(2) Before the signing of default judgment, there shall be filed with the registrar,

- (a) an affidavit that the plaintiff is still entitled to the relief sought and, where any part of the claim has been satisfied, the part so satisfied shall be specified; and
- (b) where the plaintiff is represented by a solicitor, the certificate of his solicitor that, in his opinion, the claim is one coming within the class of cases for which default judgment may properly be signed; or
- (c) where the plaintiff is not represented by a solicitor, and the registrar is in doubt whether the claim is one coming within the class of cases for which default judgment may be properly signed, he shall obtain the *flat* of a master or local master of the Supreme Court or a judge of the county court, as the case may be.

**CONTINUED**

51. Where the writ is specially endorsed and a defendant fails to comply with rule 42, the plaintiff may, as against such defendant, sign judgment,

- (a) where the claim is for a debt or liquidated demand in money, for an amount not exceeding such claim, together with interest as claimed, to the date of judgment, and for his costs, if claimed, according to Form 92;
- (b) where the claim is for or includes a claim for recovery of land, for possession of the land, and for his costs, if claimed, according to Form 93; and
- (c) where the claim is for the recovery of chattels, for the delivery of such chattels, and for his costs, if claimed, according to Form 98. [Amended, O. Reg. 38/73, s. 14.]

**Rule 54**

54. Where the plaintiff is entitled to sign default judgment, the judgment may be signed notwithstanding that the writ may be endorsed with any other claim and any such judgment shall be without prejudice to his right to proceed against any other defendant for the same relief or against any defendant for any other relief. [Amended, O. Reg. 36/73, s. 14.]

NOTE: For a summary of the 1973 amendments see the note preceding Rule 35.

**Rule 50**

50. A judgment for default of appearance or defence shall not be signed after the expiration of one year from the date when the default occurred, without leave of the court. [Amended, O. Regs. 36/73, s. 14; 107/74, s. 1.]

NOTE: For a summary of the 1973 amendments see the note preceding Rule 35.

(4)  
21.05NOTESCONTINUED

(3) Where the claim has been partially satisfied, the default judgment shall be confined to the remainder of the claim.

(4) Unless the default judgment directs a reference, the registrar shall, on signing the judgment, fix the costs to which the plaintiff is entitled against the defendant in default in accordance with the appropriate tariffs.

(5) No default judgment may be signed against a party under disability without the leave of a judge.

**\* 21.05 By Proceeding to Trial**

After the noting of default, the plaintiff shall proceed to trial in respect of any claim for,

(a) unliquidated damages, unless the amount of the damages has been agreed upon; or

(b) a declaration of the invalidity of a marriage.

Rule 668 (2) (3)  
Rule 56

**Rule 668**

(2) On the signing of default judgment, the officer signing judgment may fix and ascertain costs without taxation.

(3) The officer taking an account in a mortgage action may tax costs.

**Rule 56**

56. In any action where the plaintiff is not entitled to sign judgment for default of appearance or defence or to move for judgment, the plaintiff shall note pleadings closed and set the action down for trial. [Amended, O. Reg. 36/73, s. 14.]

NOTE: For a summary of the 1973 amendments see the note preceding Rule 35.

**\* Rule 57**

57. Except after trial, a plaintiff may not move for judgment,

- (a) in a matrimonial cause;
- (b) in an action to declare the invalidity of a marriage; or
- (c) for unliquidated damages, unless on consent or to implement a settlement. [Amended, O. Reg. 36/73, s. 14.]

21.06 (1)  
(2)  
21.07 (1)  
(2)

Rule 61 (1)  
Rule 61 (2)  
Rules 54; 65  
Rule 260

**21.06 By Motion for Judgment**

(1) After the noting of default, the plaintiff may apply to a judge for judgment on the Statement of Claim as against a defendant noted in default in respect of any claim for which he has not signed default judgment or for which he is not required by Rule 21.05 to proceed to trial.

(2) Where, for any reason, an action proceeds to trial, a motion for judgment on the Statement of Claim, as against a defendant noted in default may be made at the trial.

**21.07 Effect of Default Judgment**

(1) Any judgment obtained against a defendant after he has been noted in default shall be without prejudice to the right of the plaintiff to proceed against the same defendant for any other relief or against any other defendant for the same or any other relief.

(2) A plaintiff is not entitled to judgment on a motion for judgment or at trial merely because the facts alleged in his Statement of Claim are deemed to be admitted, unless such facts entitle him to judgment as a matter of law.

**Rule 61**

61.—(1) After pleadings have been noted closed, a plaintiff may, subject to rules 57 and 62, move for judgment upon the statement of claim.

(2) Where pleadings have been noted closed against one defendant and the action proceeds to trial as against another defendant, such motion may be made at the trial. [Amended, O. Reg. 36/73, s. 14.]

**Rule 54**

54. Where the plaintiff is entitled to sign default judgment, the judgment may be signed notwithstanding that the writ may be endorsed with any other claim and any such judgment shall be without prejudice to his right to proceed against any other defendant for the same relief or against any defendant for any other relief. [Amended, O. Reg. 36/73, s. 14.]

**Rule 65**

65. On any motion for judgment, judgment may be awarded against any defendant and any such judgment shall be without prejudice to the plaintiff's right to proceed against any other defendant for the same relief or against any defendant for any other relief. [Amended, O. Reg. 36/73, s. 14.]

**Rule 260**

260. A party is not entitled to judgment at the trial or on motion on the ground of his pleading being true, if the facts proved are not sufficient in point of law to entitle him to judgment.

21.08  
21.09

## NOTES

### 21.08 Setting Aside Default Judgment

(1) Any judgment signed by the registrar against a party noted in default may be set aside or varied by the court, upon such terms as may seem just.

(2) Any judgment obtained on a motion for judgment on the Statement of Claim, either before or at the trial, may be set aside or varied by a judge on such terms as may seem just.

(3) As a term of setting aside a default judgment, the court may, where appropriate, allow any Writ of Seizure and Sale issued pursuant to the default judgment to remain on file in the office of a sheriff, or in an office of Land Titles, pending the final disposition of the action, on condition that any proceedings to enforce the Writ of Seizure and Sale be stayed in the meantime or otherwise as the court may order.

### 21.09 Application to Counterclaims, Cross-Claims and Third Party Claims

Subject to the provisions of Rules 28, 29 and 30, this rule shall apply, with any necessary modification, to a counterclaim, a cross-claim or a third party claim.

Rule 526  
Rules 61(3); 170

### Rule 526

526. Any judgment by default may be set aside on motion. [Amended.  
O. Reg. 520/78, s. 31.]  
[See also Rule 509.—Ed.]

(1) Where issues arise otherwise than between plaintiff and defendant and if any party to any such issue makes default in delivering any pleading, the court may, at the trial or on motion, give such judgment as upon the pleadings seems just. [New, O. Reg. 437/73, s. 1.]

NOTE: For a summary of the 1973 amendments see the note preceding Rule 35.

### Rule 170

170. Where the third party makes default in entering an appearance to the third party notice and in delivering a statement of defence to the statements of the defendant's claim against the third party,

(a) he shall be deemed to admit the validity of any judgment obtained (whether by consent or on default or otherwise) against such defendant, and his own ability to contribute or indemnify, claimed in the third party proceedings;

(b) the defendant giving the notice, in case he suffers judgment at any time before trial, is entitled at any time to move for judgment against the third party to the extent of the contribution, indemnity or relief over claimed in the third party proceedings;

(c) if the action is tried and results in favour of the plaintiff, the judge who tries the action may, at or after the trial, direct such judgment as the nature of the case requires to be entered for the defendant giving the notice against the third party. [Amended, O. Reg. 100/76, s. 16.]

## \* RULE 22 SUMMARY JUDGMENT

### 22.01 Where Available

#### (1) To Plaintiff

- (a) At any time before an action is set down for trial, the plaintiff may apply for summary judgment against a defendant who had delivered his Statement of Defence, or has served a Notice of Motion, on the ground that,
  - (i) there is no defence to the action, or with respect to one or more of the claims contained therein or to the whole or part of any such claim; or
  - (ii) the only defence is to the amount claimed.
- (b) Where there is some special reason for urgency, the plaintiff may apply, without notice, for leave to serve a Notice of Motion for Summary Judgment with the Statement of Claim, and such leave may be given, subject to such directions as may seem just.

#### (2) To Defendant

At any time after he has delivered his Statement of Defence and before the action is set down for trial, a defendant may apply for summary judgment against the plaintiff on the ground that there is no merit in the action, or with respect to one or more claims therein, or to the whole or part of any such claim.

### Rule 58

58.—(1) Where the defendant files an appearance to a writ specially endorsed and delivers an affidavit of merit, the plaintiff may either move for judgment, or cross-examine upon such affidavit and thereafter move for judgment.

### Rule 63

63. A party may, at any stage of an action, apply for such judgment or order as he may, upon any admissions of fact in the pleadings, or in the examination of any other party, be entitled to; and it is not necessary to wait for the determination of any other question between the parties. [Amended, O. Reg. 36/73, s. 14.]

NOTE: For a summary of the 1973 amendments see the note preceding Rule 35.

### Rule 59

59. Where a writ is specially endorsed the plaintiff may, either before or after service thereof, apply ex parte for leave to serve notice of motion for judgment and, where some special reason for urgency is shown, such leave may be given subject to such directions as seem just. [Amended, O. Reg. 36/73, s. 14.]

NOTE: For a summary of the 1973 amendments see the note preceding Rule 35.

### Rule 64

64. A party may, at any stage of an action, apply for such judgment or order as he may be entitled to where the only evidence consists of documents and such affidavits as are necessary to prove their execution or identity without the necessity of any cross-examination, or, where infants are concerned, and evidence is necessary so far only as they are concerned, for the purpose of proving facts that are not disputed. [Amended, O. Reg. 36/73, s. 14.]

NOTES**22.02 Affidavit Evidence**

(1) Before any party may be heard on a motion for summary judgment, he shall have delivered his own affidavit setting forth all the material facts upon which he intends to rely to the extent that he has personal knowledge thereof, and in which he swears that he knows of no fact material to the motion which has not been disclosed.

(2) To the extent that any party does not have personal knowledge of the material facts upon which he intends to rely, he shall also deliver the affidavit of some other person having such knowledge.

(3) Where the defendant is acting in a representative capacity or where the defendant is under disability and is represented by a litigation guardian or a committee, and the defendant or his litigation guardian or a committee, as the case may be, after careful inquiry, is unable to comply with the requirements of this sub-rule, and does not feel justified in admitting the claim of the plaintiff, he may deliver an affidavit to that effect.

**22.03 Cross-Examination**

(1) Any party to a motion for summary judgment, who has delivered his own affidavit and the affidavit of every other person upon which he intends to rely, may cross-examine the deponent of any affidavit delivered by or on behalf of the opposite party.

(2) Where a party has cross-examined under paragraph (1), he shall not deliver any additional affidavit for use on the hearing of the motion without leave or consent; and such leave may be granted where the court is satisfied that he ought to be permitted to respond by affidavit to any matter raised on the cross-examination.

(3) The right to cross-examine under paragraph (1) shall be exercised with reasonable diligence, and the court may refuse an adjournment of the motion for the purpose of cross-examination where the party seeking the adjournment has failed to do so.

**NOTES**

22.04 (1)  
 (2)  
 (4)

Rule 58(2), (6)  
 Rule 58(7)  
 Rule 60

**22.04 Disposition of Motion****(1) Where No Defence or Merit to Action**

Where the applicant satisfies the court that there is no defence or merit to the action, as the case may be, or with respect to any particular claim or any part thereof, and that the applicant is entitled to judgment as a matter of law, the court may grant judgment.

**(2) Where Only Defence is to the Amount Claimed**

Where the plaintiff satisfies the court that the only defence is to the amount claimed, the court may either direct a trial of that issue or a reference to determine that amount.

**(3) Where Only Issue is a Question of Law**

Where the court is satisfied that the only issue is a question of law, the court may determine that question and grant judgment accordingly; provided, however, that where the motion is before a master or local master, he may adjourn the motion to a judge.

**(4) Where Only Claim is for an Accounting**

Where the only claim is for an accounting and the defendant fails to satisfy the court that there is some preliminary issue to be tried, the court may grant judgment with a reference.

**Rule 58**

(2) On any such motion, where the court is satisfied that the defendant has not a good defence to the action or has not disclosed such facts as may be deemed sufficient to entitle him to defend the action, judgment may be given for the plaintiff.

(6) Where the defence disclosed applies only to a part of the plaintiff's claim, or any part of his claim is admitted to be due, the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to, or as is admitted to be due, subject to such terms, if any, as to staying execution or payment into court as seem just, and the defendant may be allowed to defend as to the residue of the plaintiff's claim, or a reference may be directed under sub-rule (7) of this rule.

(7) Where it appears that the defence disclosed is substantially only as to the amount recoverable, the court may direct a reference, and either pronounce judgment to take effect on the confirmation of the report, or reserve further directions and questions of costs for consideration after the report is made. [Amended, O. Reg. 36/73, s. 14.]

NOTE: For a summary of the 1973 amendments see the note preceding Rule 35.

**Rule 60**

60. Where the plaintiff's claim is for an accounting and a statement of claim has been delivered, the plaintiff may move for judgment, and, unless the defendant satisfies the court that there is some preliminary question to be tried, judgment with a reference may be pronounced. [Amended, O. Reg. 36/73, s. 14.]

NOTE: For a summary of the 1973 amendments see the note preceding Rule 35.

NOTES**22.05 Where a Trial is Necessary**

(1) Where summary judgment is refused, or is granted in part only, and a trial is necessary, the court may make an order specifying what material facts, if any, are not in dispute, and defining the remaining issues, unless such issues are sufficiently defined by the pleadings, and may order that the action proceed to trial by being,

- (a) placed forthwith, or within a specified time, on a list of cases requiring speedy trial; or
- (b) set down for trial in the normal course, or within a specified time.

(2) Where an action is ordered to proceed to trial, in whole or in part, the court may impose such terms and conditions as may seem just including an order,

- (a) for the payment into court of the whole or any part of the claim, and in addition thereto or in lieu thereof, an order for security for costs.
- (b) that the scope of examinations for discovery be limited to matters not covered by the affidavits filed on the motion and any cross-examinations thereon, and that such affidavits and cross-examinations be used in addition to or in lieu of examinations for discovery.

(3) Where any party fails to comply with an order for payment into court or for security for costs, the opposite party may apply to the court for an order dismissing the action or striking out the Statement of Defence, as the case may be, with or without costs as may seem just. Where on such a motion the Statement of Defence is struck out, the defendant shall be deemed to be noted in default, and the plaintiff may also move for judgment in respect of any claim for relief for which he is not required by Rule 21.05 to set the action down for trial.

(4) Where it appears that the enforcement of any summary judgment ought to be stayed pending the determination of any claim in the action or in any counterclaim, cross-claim or third party claim, the court may so order upon such terms as may seem just.

**Rule 58**

(3) On any such motion, instead of granting judgment, the court may give the defendant leave to defend on such terms as seem just, or make an order for a speedy trial of the action with or without pleadings upon proper terms.

(5) Where a defendant does not dispute the plaintiff's claim but sets up a counter-claim, the court may stay proceedings respecting the claim until the counter-claim is disposed of.

NOTES**22.06 Cost Sanctions for Improper Use of Rule****(1) *Where Motion Fails***

Where, on a motion for summary judgment, the applicant obtains no relief and the action as originally constituted is allowed to proceed to trial without the imposition of terms or conditions, the court shall fix the costs of the opposite party and order the applicant to pay those costs forthwith unless the court is satisfied that the motion, although unsuccessful, was nevertheless justified.

**(2) *Where Affidavit Filed in Bad Faith***

Where it appears to the court that any affidavit filed on a motion under this rule was filed in bad faith or solely for the purpose of delay, the court may fix the costs of the opposite party and order the party filing the affidavit to pay those costs forthwith.

**22.07 Effect of Summary Judgment**

Where a plaintiff obtains summary judgment under this rule, such judgment shall be without prejudice to his right to proceed against the same defendant for any other relief or against any other defendant for the same or any other relief.

**22.08 Application to Counterclaims, Cross-Claims and Third Party Claims**

Subject to the provisions of Rules 28, 29 and 30, this rule shall apply, with any necessary modification, to a counterclaim, a cross-claim or a third party claim.

**Rule 65**

65. On any motion for judgment, judgment may be awarded against any defendant and any such judgment shall be without prejudice to the plaintiff's right to proceed against any other defendant for the same relief or against any defendant for any other relief. [Amended, O. Reg. 36/73, s. 14.]

NOTE: For a summary of the 1973 amendments see the note preceding Rule 35.

NOTES**DISPOSITION WITHOUT TRIAL****RULE 23 DETERMINATION OF A QUESTION OF LAW****23.01 Where Available**

(1) The plaintiff or a defendant may, at any time before the action is set down for trial, apply to a judge,

- (a) for the determination, prior to trial, of any question of law raised by any pleading in the action where the determination of that question may either dispose of the action, shorten the trial, or result in a substantial saving of costs;
- (b) to strike out any pleading on the ground that it discloses no reasonable cause of action or defence; or
- (c) for judgment upon any admission of fact in the pleadings, in the examination of any other party or in answer to a Notice to Admit.

(2) A defendant may, at any time before the action is set down for trial, apply to a judge to have the action stayed or dismissed on the ground that,

- (a) the court is without jurisdiction to try the action;
- (b) the plaintiff is without legal capacity to commence or continue the action;
- (c) another action is pending in the same or another jurisdiction between the same parties and in respect of the same claim; or
- (d) the action is scandalous, frivolous or vexatious, or is otherwise an abuse of the process of the court.

**Rule 124**

124. Either party is entitled to raise by his pleadings any point of law, and by consent of the parties or by leave of a judge, the point of law may be set down for hearing at any time before the trial, otherwise it shall be disposed of at the trial.

**Rule 125**

125. Upon the determination of the point of law, the court may pronounce such judgment as is deemed proper.

**Rule 126**

126. A judge may order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer, and in any such case, or in case of the action or defence being shown to be frivolous or vexatious, may order the action to be stayed or dismissed, or judgment to be entered accordingly.

**Rule 63**

63. A party may, at any stage of an action, apply for such judgment or order as he may, upon any admissions of fact in the pleadings, or in the examination of any other party, be entitled to; and it is not necessary to wait for the determination of any other question between the parties. (Amended, O. Reg. 36/73, s. 14.)

23.03

Rule 65

NOTES**DETERMINATION OF A  
QUESTION OF LAW****RULE 23****23.02 No Evidence Admissible Without Leave**

No evidence, other than a transcript of any relevant examination, shall be admissible on a motion under Rule 23.01 (1) without leave of the judge, except for such affidavits as are necessary to identify any document or prove its execution.

**23.03 Effect of Judgment under This Rule**

Where a plaintiff obtains judgment under this rule, such judgment shall be without prejudice to his right to proceed against the same defendant for any other relief, or against any other defendant for the same or any other relief unless the judge otherwise orders.

**Rule 65**

65. On any motion for judgment, judgment may be awarded against any defendant and any such judgment shall be without prejudice to the plaintiff's right to proceed against any other defendant for the same relief or against any defendant for any other relief. [Amended, O. Reg. 36/73, s. 14.]

## NOTES

**RULE 24 STATED CASE****24.01 Where Available**

(1) Where the parties to an action concur in stating one or more questions of law, in the form of a stated case, for the opinion of the court, any party may apply to a judge for leave to set the stated case down for hearing.

(2) Such leave may only be granted where the judge is satisfied that the determination of such questions will either dispose of the action or facilitate the determination of the matters in issue.

**24.02 Form of Stated Case**

A stated case shall set out concisely the facts agreed upon between the parties, including such reference to any documents as may be necessary to enable the judge to determine the questions stated and shall be signed by the parties or their solicitors (Form 24A).

**24.03 Hearing of Stated Case**

(1) Upon the hearing of a stated case, the entire contents of any documents referred to therein may be read, and the judge may draw any inference from the facts and the documents as might have been drawn therefrom if they had been proved at a trial.

(2) Where the parties have agreed upon the specific relief to be granted on the determination of the questions of law so stated, and where that agreement has been set out in the stated case, the judge may, on the determination of such questions, grant judgment accordingly.

**Rule 128**

128.—(1) The parties to any cause may concur in stating questions of law arising in the form of a special case for the opinion of the court and may agree that, on the judgment of the court being given in the affirmative or negative to the question or questions of law raised, certain specific relief may be awarded.

(2) Upon the argument of the case, the entire contents of the documents referred to therein may be read, and the court may draw from the facts and documents any inference, either of fact or law, as at a trial.

**24.04 Removal into Court of Appeal**

Any party to an action may apply to a judge of the Court of Appeal for leave to have a stated case determined by that court where the questions of law so stated,

- (a) raise a constitutional issue;
- (b) require the interpretation of a statute;
- (c) question the validity of a regulation purporting to have been made pursuant to statutory authority; or
- (d) raise an issue in respect of which,
  - (i) there are conflicting decisions of judges of the High Court and there is no decision of an appellate court in Ontario;
  - (ii) there is a conflict between a decision of an appellate court in Ontario and that of an appellate court of another province or between decisions of appellate courts of at least two other provinces; or
  - (iii) one of the parties will seek to establish that a previous decision of an appellate court in Ontario should not be followed.

25

25.01

(a)

(b)

(c)

25.02

25.03

- Rule 320 (2)
- Rule 320 (1)
- Rule 320 (5)
- Rule 320 (5)
- Rule 321
- Rule 320 (3)

## RULE 25 DISCONTINUANCE AND WITHDRAWAL

### 25.01 Discontinuance by Plaintiff

A plaintiff may discontinue his action against any defendant, either in whole or in part,

- (a) at any time before the close of pleadings, by serving upon all parties who have been served with the Statement of Claim, a Notice of Discontinuance (Form 25A) and filing the notice with proof of service;
- (b) after the close of pleadings, by obtaining leave of the court; or
- (c) at any time, by filing the consent in writing of all parties.

### 25.02 Withdrawal by Defendant

(1) A defendant may withdraw his Statement of Defence, or any part of his defence, with respect to any plaintiff at any time by delivering to all parties a Notice of Withdrawal (Form 25B); provided that, where there is a counterclaim, cross-claim or third party claim, leave to withdraw must be obtained from the court.

(2) Where a defendant wholly withdraws his Statement of Defence under this rule, he shall be deemed to have been noted in default.

### 25.03 Costs on Discontinuance or Withdrawal

A party wholly discontinuing an action or wholly withdrawing his Statement of Defence against another party shall pay the costs of the other party to date, including the costs of any cross-claim or third party claim, unless otherwise ordered by the court, or the parties otherwise consent.

### Rule 320

320.—(1) The plaintiff may, at any time before receipt of the statement of defence of any defendant, or after the receipt thereof before taking any other proceeding in the action (save an interlocutory application), by notice in writing, filed and served, wholly discontinue his action against such defendant or withdraw any part thereof, and the defendant is entitled to the costs of the action, if wholly discontinued against him, or, if not wholly discontinued, to the costs occasioned by the part withdrawn (Form 31).

(2) A plaintiff may discontinue as to one or more of several defendants.

(3) Such costs may be taxed upon production of the notice served, and, if not paid within four days from taxation, the defendant may issue execution therefor.

(4) Except as provided by the preceding subrules, a plaintiff shall not discontinue without leave of the court, which may be granted upon such terms as to costs and as to any other action against all or any of the defendants and otherwise as are proper.

[See also Rule 326.—Ed.]

### Rule 321

321. A defendant may withdraw his defence, or any part thereof, by written notice filed and served.

25.04  
25.06

Rule 325  
Rule 320(4)

## NOTES

### DISCONTINUANCE AND WITHDRAWAL RULE 25

#### 25.04 Effect of Discontinuance on Counterclaim

Where an action is discontinued against a defendant who has counterclaimed, he may, within 30 days thereafter, deliver a Notice of Election (Form 25C) to proceed with his counterclaim. In default of such election, the counterclaim shall be deemed to be discontinued without costs.

#### 25.05 Effect of Discontinuance on any Cross-Claim or Third Party Claim

Where an action is discontinued against a defendant who has commenced a cross-claim or third party claim, the cross-claim or third party claim shall be deemed to be dismissed with costs payable by the plaintiff, unless the court otherwise orders.

#### 25.06 Effect on Subsequent Action

(1) The discontinuance of an action in whole or in part shall not be a defence to a subsequent action, unless otherwise provided by the order giving leave to discontinue or by the consent filed.

(2) Where a subsequent action in respect of the same subject matter is brought before payment of the costs of a discontinued action, the court may order a stay of the subsequent action until those costs have been paid.

#### 25.07 Application to Counterclaim, Cross-Claim and Third Party Claim

Subject to the provisions of Rules 28, 29 and 30, this rule shall apply, with any necessary modification, to a counterclaim, a cross-claim or a third party claim.

### Rule 325

325.—(1) Where an action has been discontinued or dismissed for want of prosecution, a defendant who has counter-claimed may, if he so elects, proceed with the trial of his counter-claim, and, if he elects to proceed, he shall give notice of his election within ten days after the discontinuance or dismissal of the action, and the counter-claim is then liable to dismissal for want of prosecution for failure to proceed to trial, or the defendant may, if he so elects, discontinue his counter-claim in whole or in part, and the defendant by counter-claim is then entitled to the costs of the counter-claim, if wholly discontinued, or, if not wholly discontinued, to the costs occasioned by the part withdrawn, and subrules 2, 3 and 4 of rule 320 apply mutatis mutandis.

(2) In default of such election, the counter-claim shall on the discontinuance of the action be deemed to be discontinued without costs or on the dismissal of the action be deemed to be dismissed without costs.

### RULE 320

(4) Such discontinuance or withdrawal is not a defence to any subsequent action.

- 26.01 (a)  
 (b)  
 (c)  
 (d)

**RULE 26 DISMISSAL OF ACTION  
FOR WANT OF PROSECUTION**

**26.01 Where Available**

Any defendant who is not himself in default under these rules, or under any order of the court, may apply to have an action dismissed for want of prosecution where the plaintiff has failed.

- (a) to serve his Statement of Claim on all the defendants within the time limited for so doing;
- (b) to note in default any defendant for failure to deliver his Statement of Defence, within 30 days after such default;
- (c) to set the action down for trial within six months after the close of pleadings; or
- (d) to apply to the court for leave to restore to a list for trial any action which has been struck off a list for trial, within 30 days thereafter.

- Rule 322 (a)  
 Rule 322 (b)  
 Rule 323  
 Rule 324

**Rule 322**

322. An action may be dismissed for want of prosecution where the plaintiff has failed,

- (a) to deliver his statement of claim within the time prescribed for so doing, or
- (b) to require that pleadings be noted closed against any defendant who is in default in delivering his statement of defence within ten days after such default. [Amended, O. Reg. 3673, s. 28.]

**Rule 323**

323.—(1) An action in the Supreme Court to be tried at Toronto may be dismissed for want of prosecution unless the plaintiff has set the action down for trial within six months after the pleadings are closed and, where required by the rules, has served and filed notice of trial within the times prescribed by rule 249. [Amended, O. Regs. 10774, s. 4; 62876, s. 7.]

(2) Any other action may be dismissed for want of prosecution unless the plaintiff has set the action down for trial at the first sittings for which the action could be set down commencing more than six months after the close of pleadings and, where required by the rules, has served and filed notice of trial within the time prescribed by rule 249; provided, however, that, where there are separate sittings for the trial of actions with or without a jury, the plaintiff shall not be obliged to set an action down at the jury sittings for trial without a jury. [Amended, O. Regs. 30772, s. 4; 10774, s. 4.]

**Rule 324**

324.—(1) Where a judge makes an order under rule 251 the action may be dismissed for want of prosecution unless the action is set down pursuant to any directions in the order or, failing such directions, unless the plaintiff has set the action down for trial at the next sittings for which the action can be set down and, unless otherwise ordered, has served and filed notice of trial within the time prescribed by rule 249. [Amended, O. Reg. 10774 s. 5.]

(2) An action struck off the list may be dismissed for want of prosecution unless, within six weeks after the action was struck off the list, the action has been restored to a list pursuant to the order of a judge.

NOTES**26.02 Effect of Dismissal on Counterclaim**

The dismissal of an action for want of prosecution shall be without prejudice to the right of the defendant to proceed with his counterclaim, unless the court otherwise orders.

**26.03 Effect of Dismissal on Cross-Claim or Third Party Claim**

Where an action is dismissed for want of prosecution, any cross-claim or third party claim shall be deemed to be dismissed, with costs payable by the plaintiff, unless the court otherwise orders.

**26.04 Effect on Subsequent Action**

(1) The dismissal of an action for want of prosecution shall not be a defence to a subsequent action unless otherwise provided in the order dismissing the action.

(2) Where a subsequent action in respect of the same subject matter is brought before payment of the costs of an action dismissed for want of prosecution, the court may order a stay of the subsequent action until those costs have been paid.

**Rule 325**

325.—(1) Where an action has been discontinued or dismissed for want of prosecution, a defendant who has counter-claimed may, if he so elects, proceed with the trial of his counter-claim, and, if he elects to proceed, he shall give notice of his election within ten days after the discontinuance or dismissal of the action, and the counter-claim is then liable to dismissal for want of prosecution for failure to proceed to trial, or the defendant may, if he so elects, discontinue his counter-claim in whole or in part, and the defendant by counter-claim is then entitled to the costs of the counter-claim, if wholly discontinued, or, if not wholly discontinued, to the costs occasioned by the part withdrawn, and subrules 2, 3 and 4 of rule 329 apply mutatis mutandis.

(2) In default of such election, the counter-claim shall on the discontinuance of the action be deemed to be discontinued without costs or on the dismissal of the action be deemed to be dismissed without costs.

NOTES**26.05 Failure to Set Action Down for Trial Within One Year**

(1) Every registrar shall maintain a list of all actions in which, after the coming into force of these rules, a Statement of Defence is filed in his office. An action shall only be removed from that list when the action has been set down for trial or terminated.

(2) When an action has been on the list for one year, the registrar shall mail to the solicitors of record, or, where there is no solicitor of record, to the party, a Notice of Status Hearing (Form 26A) at least 60 days before the date fixed for the hearing.

(3) Unless the action has been set down for trial or terminated before the date fixed for the hearing, the solicitors of record shall attend and the parties may attend on the hearing. Where a party represented by a solicitor does not attend, the solicitor shall, on the hearing, file proof that a copy of the notice was served on his client.

(4) On the status hearing, the judge shall order the action to be set down for trial within a time limit specified in the order, or he may adjourn the hearing to a fixed date or make such other order as may seem just.

(5) Unless the action is set down for trial within the time limit so ordered, or it is terminated in the meantime, the registrar shall dismiss the action for want of prosecution.

**26.06 Application to Counterclaim, Cross-Claim and  
Third Party Claim**

Subject to the provisions of Rules 28, 29 and 30, this rule shall apply, with any necessary modification, to a counter-claim, a cross-claim or a third party claim.

NOTES**RULE 27 PLEADINGS****27.01 Pleadings Required or Permitted**

\*#\*(1) In an action, pleadings shall consist of the Statement of Claim and a Statement of Defence and may include a Reply (Form 27A).

(2) In a counterclaim, pleadings shall consist of the Counterclaim (Form 27B), and a Defence to Counterclaim (Form 27C) and may include a Reply to Defence to Counter-claim (Form 27D).

(3) In a cross-claim, pleadings shall consist of the Cross-Claim (Form 27E) and a Defence to Cross-Claim (Form 27F) and may include a Reply to Defence to Cross-Claim (Form 27G).

\*#\*(4) In a third party claim, pleadings shall consist of the Third Party Claim (Form 27H) and a Third Party Defence (Form 27I) and may include a Reply to Third Party Defence (Form 27J).

(5) No reply which merely amounts to a joinder of issue shall be delivered. If a reply is not delivered within the time limited for the delivery thereof, there shall be an implied joinder of issue which shall operate as a denial of every material allegation of fact made in the previous pleading of the opposite party.

\* (6) No pleading subsequent to a reply shall be delivered without the consent in writing of the opposite party or by leave of the court.

**27.02 Additional Requirements**

Pleadings shall be divided into paragraphs numbered consecutively, and each allegation so far as is practicable shall be contained in a separate paragraph.

\*

**Rule 121**

121. No pleading subsequent to reply shall be delivered without leave.

\*\*

**Rule 111**

111.—(1) The plaintiff shall state the nature of his claim and the relief sought in a pleading to be called the "statement of claim" and may therein alter, modify or extend his claim as endorsed upon the writ.  
 (2) (Revoked, O. Reg. 107/74, s. 2.)

\*\*\*

**Rule 169**

(3) The statement of the defendant's claim against the third party, the third party's statement of defence and the reply, if any, shall constitute the record in the third party proceedings. [Amended, O. Reg. 106/75, s. 15.]

NOTES

## 27.03 Service of Pleadings

## (1) Who is to be Served

Every pleading shall be served on the opposite party and upon every other person who is, at the time of such service, a party to the action or to any counterclaim, cross-claim or third party claim in the action.

## (2) Service on Added Parties

Where a person is added as a party to an action by an order of the court, or is made a party to a counterclaim or to a third party claim in the action, it shall be the responsibility of the party adding him to serve upon the added party a copy of all the pleadings previously delivered in the action or in any counterclaim, cross-claim or third party claim in the action.

## (3) Where Personal Service Not Required

Where a pleading is an originating process and is required to be served on a party, other than an opposite party, personal service is not required.

## 27.04 Time for Delivery of Pleadings

(1) The time for delivery of a Statement of Claim is prescribed by Rule 16.07.

(2) The time for delivery of a Statement of Defence is prescribed by Rule 20.01.

(3) A Reply shall be delivered within 10 days after service of the Statement of Defence.

(4) The time for delivery of pleadings in a counter-claim is prescribed by Rule 28.

(5) The time for delivery of pleadings in a cross-claim is prescribed by Rule 29.

(6) The time for delivery of pleadings in a third party claim is prescribed in Rule 30.

## Rule 47

47.—(1) The plaintiff shall deliver his reply, if any, within ten days after a statement of defence has been delivered.

## Rule 142

142. Every pleading shall be filed, and served upon all parties concerned therewith, and shall be marked on the face with the date of filing, and with the title of the action, the description of the pleading, and the name and place of business of the solicitor of the party filing it, or the name and address of the party filing it if he does not act by a solicitor.

## NOTES

27.05  
27.06 (1)  
(2)  
(3)  
(4)

Rule 122  
Rule 143  
Rule 124  
Rule 153  
Rule 148

### 27.05 Close of Pleadings

Pleadings are deemed to be closed upon the noting of the defendant in default, or upon the delivery of the Reply or when the time for delivery thereof has expired.

### 27.06 Rules of Pleading - Applicable to All Pleadings

#### (1) Material Facts

Every pleading shall contain a concise statement of the material facts on which the party pleading relies for his claim or defence, but not the evidence by which those facts are to be proved.

#### (2) Pleading Law

A party may raise any point of law in his pleading. Conclusions of law may be pleaded provided that the material facts supporting such conclusions are pleaded.

#### (3) Facts Presumed unless Denied

Unless the opposite party has specifically denied it in his pleading, a party need not plead any fact which is presumed by law to be true or where the burden of disproving it lies on the opposite party.

#### (4) Condition Precedent

Unless the opposite party has specifically denied it in his pleading, a party need not plead the performance or occurrence of a condition precedent to the assertion of his claim or defence.

### Rule 122

t22. As soon as either party has joined issue upon any pleading of the opposite party, or as soon as the time for delivering a reply or subsequent pleading has expired, the pleadings shall be deemed to be closed.

### Rule 143

143. Pleadings shall contain a concise statement of the material facts upon which the party pleading relies, but not the evidence by which they are to be proved, and dates, sums and numbers shall be expressed in figures.

### Rule 124

124. Either party is entitled to raise by his pleadings any point of law, and by consent of the parties or by leave of a judge, the point of law may be set down for hearing at any time before the trial, otherwise it shall be disposed of at the trial.

### Rule 153

153. Neither party need in any pleading allege any matter of fact that the law presumes in his favour, or as to which the burden of proof lies upon the other side (e.g., consideration for a bill of exchange).

### Rule 148

148. Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the party relying thereon, and an averment of the performance or occurrence of all conditions precedent necessary for the case by the plaintiff or defendant shall be implied in his pleading.

CONTINUED

(5) (b)  
 (6)  
 (7)  
 (8)  
 (9)

Rule 159  
 Rule 151  
 Rule 152  
 Rule 149  
 Rule 150

*(5) Inconsistent Pleading*

- (a) A party may plead inconsistent allegations, provided the pleading makes it clear that such allegations are being pleaded in the alternative.
- (b) No allegation in a Reply shall be inconsistent with an allegation made in the Statement of Claim or raise a new claim. Such an allegation may only be pleaded by way of amendment to the Statement of Claim.

*(6) Notice*

Where notice to any person is alleged, it is sufficient to allege such notice as a fact unless the form or precise terms of the notice is or are material.

*(7) Contract or Agreement*

Where it is material to allege that a contract or agreement is to be implied from a series of letters or conversations or from any other circumstances, it is sufficient to allege the contract or agreement as a fact.

*(8) Documents or Conversations*

The effect of any document or the purport of any conversation, if material, shall be pleaded as briefly as possible, but the precise words of the document or conversation shall not be pleaded unless those words are themselves material. Where a document is the basis of a claim or defence, a copy of such document or the material parts thereof may be attached as a schedule to the pleading.

*(9) Nature of Act or Condition of Mind*

Where fraud, misrepresentation or breach of trust is alleged, the pleading shall contain full particulars thereof; but malice, intent or knowledge may be alleged as a fact without pleading the circumstances from which the same is to be inferred.

**Rule 159**

159. A subsequent pleading shall not raise any new ground of claim or contain any allegations of fact inconsistent with the previous pleadings of the party pleading the same.

**Rule 151**

151. Where it is material to allege notice to a person of any fact, matter or thing, it is sufficient to allege such notice as a fact unless the form or precise terms of the notice is or are material.

**Rule 152**

152. Where a contract or relation between persons does not arise from an express agreement, but it is to be implied from a series of letters or conversations or otherwise from a number of circumstances, it is sufficient to allege the contract or relation as a fact.

**Rule 149**

149. Where the contents of any document are material, it is sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof.

**Rule 150**

150. Where it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it is sufficient to allege the same as a fact, without setting out the circumstances from which the same is to be inferred.

## NOTES

(10)

(11)

Rule 147

Rules 161; 162; 163; 164;

## CONTINUED

(10) *Claim for Relief*

Where a pleading contains a claim for relief, the nature of the relief claimed shall be specified and, when damages are claimed, the amount shall be stated. Particulars of special damages need only be pleaded to the extent that they are known at the date of the pleading, but further particulars shall be delivered forthwith after they become available and, in any event, not less than 10 days before trial.

(11) *Subsequent Facts*

A party may plead any fact that has occurred since the commencement of the action and, where any such fact occurs after the delivery of his pleading, he may apply to the court for leave to deliver an amended pleading. Such leave may be granted upon such terms as may seem just where the amendment will permit the convenient administration of justice, notwithstanding that any such fact may give rise to a new claim or defence.

## Rule 147

147. Every statement of claim and counter-claim shall state specifically the relief claimed, either simply or in the alternative, and may also ask for general relief, and, when damages are claimed, the amount shall be named.

## Rule 161

161. A ground of defence or counter-claim that has arisen after action but before the defendant has delivered his statement of defence may be pleaded either alone or with other grounds of defence.

## Rule 162

162. If, after a counter-claim has been delivered, a ground of defence thereto arises it may be pleaded in answer thereto.

## Rule 163

163. Where a ground of defence or counter-claim arises after the delivery of the statement of defence or counter-claim, the defendant may, within ten days after such ground of defence or counter-claim has arisen, deliver a further defence or counter-claim, setting forth the same, or introduce the same by amendment into his statement of defence or counter-claim.

## Rule 164

164. Where a ground of defence to a counter-claim arises after the delivery of the defence thereto, the defendant to the counter-claim may, within ten days after such ground of defence has arisen, deliver a further pleading setting forth the same, or may set up such new ground of defence by amendment.

27.07 (2)  
 (3)  
 (4)

### 27.07 Rules of Pleading - Applicable to Defence and Reply

#### (1) Admissions and Denials

A party, in his defence or reply, shall specifically admit every allegation of fact in the pleading of the opposite party which is not disputed by him and, subject to paragraph (5), all allegations of fact which are not denied either generally or specifically shall be deemed to be admitted unless the party pleading to any such allegation alleges that he has no knowledge in respect thereof.

#### (2) Different Version of Facts

Where it is intended to prove a different version of the facts than that pleaded by the opposite party, a mere denial of the version so pleaded is not sufficient, but a party, in his defence or reply, shall plead his own version of the facts.

#### (3) Affirmative Defences

A party, in his defence or reply, shall plead any matter upon which he intends to rely to defeat the claim or defence of the opposite party and which, if not specifically pleaded, might take the opposite party by surprise or raise an issue which has not been raised in any previous pleading.

#### (4) Effect of Denial of Contract

Where a contract or agreement is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial of the making of the contract or agreement alleged, or of the facts from which the same may be implied by law, and not as a denial of the legality or sufficiency in law of the contract or agreement.

#### (5) Damages

In an action for damages, the amount thereof shall be deemed to be in issue, unless specifically admitted.

Rules 144; 154; 155  
 Rules 145; 154; 155; 158  
 Rule 156

#### Rule 144

144. Each party shall admit such of the material allegations contained in the pleading of the opposite party as are true, and a defendant shall not deny generally the allegations contained in the statement of claim but shall set forth the facts upon which he relies even though this may involve the assertion of a negative.

#### Rule 146

146. Except as otherwise provided, the silence of a pleading as to any allegation contained in the previous pleading of the opposite party shall not be construed as an admission of the truth of such allegation.

#### Rule 154

154. If either party wishes to deny the alleged constitution of a partnership, or the right of any other party to claim as executor, or as trustee, or as assignee in insolvency, or in any representative or other alleged capacity, he shall deny the same specifically, or the same will be taken to be admitted.

#### Rule 155

155. Unless the incorporation of a corporate party is specifically denied, it is not necessary to prove it.

#### Rule 145

145. A defendant to an action or counter-claim shall raise all matters that show the action or counter-claim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as if not raised would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as, for instance, fraud. The Limitations Act, release, payment, performance, facts showing illegality either by statute or common law, or The Statute of Frauds.

#### Rule 158

158. Where a defendant by virtue of any statute enabling him so to do pleads not guilty by statute, he shall in his defence refer to the statute giving the right so to plead, and also to all statutes upon which he relies, giving chapter and section in every such reference, and, if so required, shall deliver particulars of his defence.

#### Rule 156

156. Where a contract is alleged, a denial of the contract shall be construed only as a denial of the making of the contract in fact, and not of its legality or its sufficiency in law, whether with reference to The Statute of Frauds or otherwise.

## NOTES

### 27.08 Particulars

(1) Where a party demands better particulars of any allegation in the pleading of the opposite party, and the opposite party fails to supply them within 5 days, the court may, upon such terms as may seem just, order such particulars to be delivered within a specified time.

(2) Particulars, for the purpose of pleading, may be ordered when the pleading in question is so vague or ambiguous that the opposite party cannot reasonably be required to frame a responsive pleading thereto.

(3) Particulars, for the purpose of trial, may be ordered after the close of pleadings where such particulars appear necessary to define the issues for trial or to avoid surprise at trial.

### \* 27.09 Striking Out a Pleading or Other Document

The court may strike out or expunge any pleading, or other document, or any part thereof, at any time, with or without leave to amend, and upon such terms as may seem just, on the ground that such pleading or other document,

- (a) may prejudice, embarrass or delay the fair trial of the action;
- (b) is scandalous, frivolous or vexatious; or
- (c) is an abuse of the process of the court.

### Rule 140

140. A further and better statement of the nature of the claim or defence or further and better particulars of any matter stated in any pleading or special endorsement may be ordered in all cases (Form 71).

### Rule 126

126. A Judge may order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer, and in any such case, or in case of the action or defence being shown to be frivolous or vexatious, may order the action to be stayed or dismissed, or judgment to be entered accordingly.

### Rule 138

138. The court may order that any pleading, petition or affidavit, or any part of a pleading, petition or affidavit, which is scandalous, be taken off the file, or may direct the scandalous matter to be expunged.

### Rule 139

139. Any pleading that may tend to prejudice, embarrass or delay the fair trial of the action may be struck out or amended.

### \* Rule 168

168. A third party notice may be set aside upon an application made at any time before the time limited for the entry of the appearance and delivery of the statement of defence of the third party.

## NOTES

27.10(1)  
 (2) (a)  
 ...  
 (b)

Rule 132  
 Rule 129  
 Rule 131

\*27.10 Amendment of Pleadings

(1) General Power of Court

The court may at any stage of an action grant leave to amend any pleading and such leave shall be given, on such terms as may seem just, unless prejudice will result which cannot be compensated for by costs or an adjournment.

(2) When Amendments May be Made

A party may amend any pleading filed by him,

- (a) once, without leave, at any time prior to the close of pleadings, provided that the amendment does not include or require the addition, deletion or substitution of a party or parties to the action;
- (b) at any time, with the written consent of all parties or leave of the court.

(3) When Amendments May be Disallowed

Where a party has amended a pleading without the consent of all parties or leave of the court, any other party may, within 10 days after service on him of the amended pleading, apply to the court to disallow the amendment or for the imposition of terms.

Rule 132

132. An amendment may be made by leave of the court, or of the judge at the trial, and such amendment shall be at once made on the face of the record.

Rule 129

129. A plaintiff may, without leave, amend his statement of claim, including a claim specially endorsed on the writ, once, either before the statement of defence has been delivered, or after it has been delivered and before the expiration of the time limited for reply, and before replying.

Rule 131

131. Either party may amend his pleadings at any time on filing the written consent of the opposite party.

\* Rule 788

788.—(1) Save where a respondent is being added, the petition and notice of petition may be amended once without leave before the close of pleadings.

(2) Where amended, the petition and notice of petition shall be served upon the respondent.

## CONTINUED

## (4) How Amendments Made

- (a) An amendment to any pleading shall be made on the face of the copy filed in the court office unless the amendment is so extensive as to make the amended pleading difficult or inconvenient to read, in which case a fresh copy of the original pleading as amended and bearing the date of the original pleading, shall be filed.
- (b) In either case, the amendment shall be underlined so as to distinguish the amended wording from the original and the amended pleading shall be endorsed by the registrar with the date upon which, and the authority by which, the amendment was made;
- (c) Where any pleading is amended on more than one occasion, each subsequent amendment shall be underlined with an additional line for each such occasion.

## (5) Service of Amended Pleading

- (a) Unless otherwise ordered, a copy of the amended pleading shall be served forthwith upon all of the parties to the action;
- (b) Where the amended pleading is an originating process, personal service is not required unless the party to be served has not been served with the original pleading, or has failed to respond thereto, in which case personal service is required whether or not he has been noted in default.
- (c) Proof of service of an amended pleading shall be filed forthwith after the service thereof.

## Rule 134

134. A pleading may be amended by written alterations in the copies filed and served and by additions on paper to be interleaved therewith if necessary, unless the amendments are so numerous or of such a nature that making them in the copies filed and served would render them difficult or inconvenient to read, in either of which cases the amendment shall be made by delivering a fresh copy of the pleading as amended.

## Rule 135

135. Where a pleading is amended, a memorandum shall be made in the margin stating the date of and authority for the amendment, and the amendment shall be written or underlined in ink of a different colour from that used in the original pleading.

## Rule 137

137. If a statement of claim has been delivered previously to a defendant being added, it shall be amended in such manner as the making of the new defendant a party may render desirable, and a copy of the amended statement of claim shall also be served on the new defendant.

## CONTINUED

(6) *Pleading to an Amended Pleading*

- (a) Unless otherwise ordered, a party shall plead to an amended pleading within the time remaining for pleading to the original, or within 10 days after delivery of the amended pleading, whichever is the longer period.
- (b) Where a party has pleaded to a pleading which is subsequently amended, he shall be deemed to rely on his original pleading in answer to such amendment unless he pleads to the amended pleading within the time limited for so doing.

(7) *Amendment at Trial*

Where a pleading is amended at the trial, and the amendment is made on the face of the record, an order need not be taken out and the pleading as amended need not be filed or served unless otherwise ordered.

(8) *Amendment After Limitation Period*

Notwithstanding that a relevant limitation period has expired since the commencement of the action, the court may allow an amendment,

- (a) asserting a new claim; or
- (b) adding or substituting a new party;

provided the claim asserted by the amendment, or by or against the new party, arose out of the same transaction or occurrence as the original claim and the court is satisfied that no party will suffer actual prejudice as a result of the amendment.

## Rule 130

130. Where a plaintiff has amended his statement of claim, the opposite party shall plead thereto or amend his pleading within the time he then has to plead, or within ten days from the delivery of the amendment, whichever last expires, and, in case the opposite party has pleaded before the delivery of the amendment and does not plead again or amend within the time above mentioned, he shall be deemed to rely on his original pleading in answer to such amendment.

## Rule 132

132. An amendment may be made by leave of the court, or of the judge at the trial, and such amendment shall be at once made on the face of the record.

## Rule 188

188. Where an amendment is directed or allowed at the trial, it is not necessary to issue an order therefor, and the amendment, unless otherwise directed, shall be made at once on the record.

## Rule 136

(3) Parties added or substituted as defendants shall, unless otherwise ordered, be served with the amended writ of summons, and the proceedings as against them shall be deemed to have begun only at the time when they are added.

NOTES**RULE 28 COUNTERCLAIM****28.01 Where Available**

- (1) A defendant may assert, by way of counterclaim in the action, any right or claim which he may have against the plaintiff.
- (2) Where a defendant counterclaims against a plaintiff, he may join as an added defendant by counterclaim any other person, whether a party to the action or not, who is a necessary or proper party to the counterclaim.

\*

**28.02 Statement of Defence and Counterclaim**

- (1) A defendant shall plead his defence and counter-claim in one document to be called a Statement of Defence and Counterclaim.
- (2) Where there is an added defendant by counterclaim, the Statement of Defence and Counterclaim shall contain a second style of cause showing who is plaintiff by counter-claim and who are the defendants by counterclaim.

**Rule 116**

116. A defendant may set up by way of counter-claim any right or claim whether the same sounds in damages or not.

#

**Rule 114**

114. Where a defendant sets up a counter-claim which raises questions between himself and the plaintiff and any other person, he shall add a second style of cause in which he is described as "Plaintiff by Counter-claim" and the plaintiff and such other person are described as "Defendants by Counter-claim". (Amended, O. Reg. 36/73, s. 18.)

NOTES**28.03 Time for Delivery of Statement of Defence and Counterclaim**

(1) Where a counterclaim is against the plaintiff only, the Statement of Defence and Counterclaim shall be delivered within the time limited for the delivery of the Statement of Defence in the main action.

(2) Where a counterclaim is against the plaintiff and an added defendant by counterclaim, the Statement of Defence and Counterclaim shall be issued within the time limited for delivery of the Statement of Defence in the main action, and shall be served,

- (a) on the plaintiff, within the time limited for delivery of the Statement of Defence in the main action; and
- (b) on the added defendant by counterclaim, together with a copy of the Statement of Claim in the main action, within 30 days thereafter.

(3) Personal service of a Statement of Defence and Counterclaim is not required on the plaintiff or on an added defendant by counterclaim who is a defendant to the main action unless such defendant has failed to deliver a Notice of Intent to Defend or a Statement of Defence in the main action, in which case personal service is required, whether or not he has been noted in default in the main action.

**Rule 44**

44. Unless otherwise provided a defendant shall deliver his statement of defence and counter-claim, if any, within twenty days after the delivery of the statement of claim. [Amended, O. Regs. 38/73, s. 14; 106/75, s. 12.]

**Rule 45**

45. A defendant who delivers a statement of defence and counterclaim shall serve a copy thereof together with a copy of the statement of claim and a summons, according to Form 26, upon any party to the counter-claim who is not a plaintiff in the original action within thirty days after the issue of the summons provided however, that such service may be effected upon the solicitor in the original action, if any, of a party added as a defendant by counter-claim. [Amended, O. Regs. 38/73, s. 14; 451/77, s. 1.]

28.04 (1)  
28.06

## NOTES

### **28.04 Time for Delivery of Defence to Counterclaim**

- (1) The plaintiff shall deliver his Defence to Counterclaim within the time limited for the delivery of a Reply, if any, in the main action, and where such a Reply is delivered, his Defence to Counterclaim shall be joined thereto.
- (2) An added defendant by counterclaim shall deliver his Defence to Counterclaim within 20 days after service of the Statement of Defence and Counterclaim.

### **28.05 Effect of Default of Defence to Counterclaim**

Where a defendant by counterclaim has been noted in default in respect of the counterclaim, the plaintiff by counterclaim may only obtain judgment against him upon motion to a judge.

### **28.06 Time for Delivery of Reply to Defence to Counterclaim**

A Reply to Defence to Counterclaim, if any, shall be delivered within 10 days after delivery of the Defence to Counterclaim.

### **28.07 Discovery in Respect of Counterclaim**

The parties to a counterclaim who are adverse in interest are entitled to discovery, each from the other.

Rule 46  
Rule 47(2)

### **Rule 46**

46. Unless otherwise provided any defendant to a counter-claim shall deliver his statement of defence within twenty days after the delivery of the statement of defence and counter-claim. [Amended, O. Regn. 36/73, s. 14; 106/75, s. 13.]

### **Rule 47**

47.

(2) Where a statement of defence to a counter-claim has been delivered, the plaintiff by counter-claim shall deliver his reply, if any, within ten days thereafter. [Amended, O. Reg. 36/73, s. 11.]

NOTES**28.08 Trial of Counterclaim**

A counterclaim shall be tried at the trial of the main action, unless otherwise ordered.

**28.09 Disposition of Counterclaim**

(1) Where it appears that a counterclaim may unduly complicate or delay the trial of the main action, or cause undue prejudice to any party, the court may order separate trials or strike out the counterclaim without prejudice to the right of the defendant to assert any such claim in a separate action.

(2) Where a defendant does not dispute the claim of the plaintiff in the main action, but sets up a counterclaim, the court may stay the main action until the counterclaim is disposed of.

(3) Where the plaintiff does not dispute the counterclaim of a defendant, the court may stay the counterclaim until the claim is disposed of.

\* (4) Where both the plaintiff in the main action and the plaintiff by counterclaim succeed, either in whole or in part, and there is a balance in favour of one of them, the court may in a proper case give judgment for the balance.

**28.10 Application to Counterclaim, Cross-Claim and Third Party Claim**

The provisions of this rule shall apply, with any necessary modification, to the assertion of a counterclaim by an added defendant by counterclaim, a defendant to a cross-claim or a third party.

**Rule 58**

(5) Where a defendant does not dispute the plaintiff's claim but sets up a counter-claim, the court may stay proceedings respecting the claim until the counter-claim is disposed of.

**Rule 118**

118. Where a defendant does not dispute the plaintiff's claim but sets up a counter-claim, the court may stay proceedings respecting the claim until the counter-claim is disposed of.

**Rule 119**

119. Where a plaintiff does not dispute the defendant's counter-claim, the court may stay proceedings upon the counter-claim until the claim is disposed of.

**\* Rule 117**

117. A counter-claim shall be treated as an action so as to enable the court to pronounce a final judgment upon all matters set up therin.

NOTES**RULE 29 CROSS-CLAIM****29.01 Where Available**

A defendant may cross-claim against a co-defendant whom he claims,

- (a) is, or may be, liable to him for all, or any part of the claim of the plaintiff; or
- (b) is, or may be, liable to him for any other relief relating to, or connected with, the subject matter of the main action.

**29.02 Statement of Defence and Cross-Claim**

A defendant shall plead his defence and cross-claim in one document to be called a Statement of Defence and Cross-Claim.

**29.03 Time for Delivery of Statement of Defence and Cross-Claim**

(1) A Statement of Defence and Cross-Claim shall be delivered within the time limited for delivery of the Statement of Defence in the main action.

(2) Personal service of a Statement of Defence and Cross-Claim is not required on a defendant against whom a cross-claim is made unless he has failed to deliver a Notice of Intent to Defend or a Statement of Defence in the main action, in which case personal service is required, whether or not he has been noted in default in the main action.

**29.04 Time for Delivery of Defence to Cross-Claim**

A Defence to Cross-Claim shall be delivered within 20 days after the delivery of the Statement of Defence and Cross-Claim.

**Rule 172**

172. A defendant who claims to be entitled to contribution or indemnity from or relief over against any other defendant may issue and serve a third party notice against such defendant, and the provisions of the rules relating to third party procedure shall apply mutatis mutandis except that service of the third party notice may be effected on the solicitor in the action, if any, of the defendant sought to be made liable as a third party.

NOTE**29.05 Effect of Default of Defence to Cross-Claim**

Where a defendant against whom a cross-claim is made has been noted in default in respect of the cross-claim, the defendant making the cross-claim may only obtain judgment against him at the trial of the main action or upon motion to a judge.

**29.06 Time for Delivery of Reply to Defence to Cross-Claim**

A Reply to Defence to Cross-Claim, if any, shall be delivered within 10 days after delivery of the Defence to Cross-Claim.

**29.07 Discovery in Respect of Cross-Claim**

The parties to a cross-claim who are adverse in interest are entitled to discovery, each from the other.

**29.08 Trial of Cross-Claim**

The cross-claim shall be tried at the trial of the main action, unless otherwise ordered.

**29.09 Prejudice or Delay to Plaintiff**

The plaintiff is not to be prejudiced or unnecessarily delayed by reason of a cross-claim, and he may apply to the court to impose such terms as may be necessary to prevent such prejudice or delay where that may be done without injustice to the parties to the cross-claim.

**29.10 Application to Counterclaim and Third Party Claim**

The provisions of this rule shall apply, with any necessary modification, to the assertion of a cross-claim by one defendant to a counterclaim against another defendant to the same counterclaim, or by one third party against another third party to the same third party claim.

30.01  
30.02(1)  
(2)  
(3)

Rule 167(1)  
Rule 167(3)  
Rule 167(3)  
Rule 167(4)

NOTES**RULE 30 THIRD PARTY CLAIM****30.01 Where Available**

A defendant may commence a Third Party Claim against any person who is not a party to the action, whom he claims,

- (a) is, or may be, liable to him for all or part of the claim of the plaintiff;
- (b) is, or may be, liable to him for any other relief relating to, or connected with, the subject matter of the main action; or
- (c) should be bound by the determination of some issue arising between the plaintiff and the defendant.

**30.02 Time for Delivery of Third Party Claim**

(1) A Third Party Claim may be issued without leave within 10 days after the time limited for delivery of the Statement of Defence in the main action, or subsequently with leave, and such leave shall be granted unless the plaintiff would be prejudiced thereby.

(2) A Third Party Claim shall be served, together with a copy of the Statement of Claim and the Statement of Defence in the main action, on the third party, in the manner prescribed for the service of originating process, within 30 days.

(3) A Third Party Claim shall also be served on the plaintiff in the main action within the time limited for the service thereof on the third party, but personal service thereof is not required.

**Rule 167**

167.—(1) Where a defendant who has entered an appearance claims to be entitled to contribution or indemnity or any other relief over against any person not a party to the action, hereinafter called a third party, he may issue in the office in which the action was commenced a third party notice in accordance with Form 25, which shall be sealed in the same manner as a writ of summons and he shall at the same time file a statement of his claim against the third party.

(3) Unless otherwise provided, the notice and the statement of the defendant's claim against the third party shall be served on the third party within ten days after the defendant's statement of defence has been delivered or the time limited for the delivery thereof has expired, together with a copy of the writ, a copy of the plaintiff's statement of claim and copies of any other proceedings taken in the action.

(4) A copy of the notice and the statement of the defendant's claim against the third party shall be served on the plaintiff within the times prescribed for service of the notice upon the third party. (Amended, O. Regn. 285/71, s. 1; 106/76, s. 14.)

30.03 (1)	Rules 169(1); 171
(2)	Rule 170(a)
30.05 (a)	Rules 171a(a); 171a(c)
(b)	Rule 171a(b)
(c)	Rule 171a(d)
(d)	new

### 30.03 Third Party Defence

(1) In a Third Party Defence, a third party may dispute the liability of the defendant to the plaintiff or his own liability to the defendant, or both.

(2) Where a Third Party Defence does not dispute the liability of the defendant to the plaintiff, the third party shall be deemed to admit the validity of any judgment against the defendant obtained by the plaintiff, except a judgment obtained on consent or by default.

### 30.04 Time for Delivery of Third Party Defence

A Third Party Defence shall be delivered within 20 days after service of the Third Party Claim.

### 30.05 Effect of Third Party Defence

Where a third party has delivered a Third Party Defence,

- (a) he shall be served with all subsequent pleadings and proceedings in the main action;
- (b) the parties to any third party claims who are adverse in interest are entitled to discovery, each from the other;
- (c) where the Third Party Defence disputes the liability of the defendant to the plaintiff, the third party and the plaintiff are entitled to discovery, each from the other; and
- (d) where the defendant making the third party claim has also made a cross-claim against his co-defendant, that co-defendant and the third party, if adverse in interest, are entitled to discovery, each from the other.

### Rule 169

169.—(1) Unless otherwise provided, if a third party desires to dispute his liability to the defendant or the plaintiff's claim in the action as against the defendant he shall enter an appearance and deliver his statement of defence within fifteen days from service of the notice.

### Rule 171

171. Where the third party enters an appearance to the third party notice and delivers a statement of defence to the statement of the defendant's claim against the third party he may also, if so advised, deliver a statement of defence to the plaintiff's statement of claim, to be so entitled, raising therein any defence open to the defendant which has not been raised by the defendant in his statement of defence, and the plaintiff shall thereupon be at liberty to deliver a reply to such statement of defence within ten days after service thereof, and such pleadings shall be included in and form part of the record in the action. {Amended, O. Reg. 106/75, s. 17.]

### Rule 170

170. Where the third party makes default in entering an appearance to the third party notice and in delivering a statement of defence to the statement of the defendant's claim against the third party,

- (a) he shall be deemed to admit the validity of any judgment obtained (whether by consent or on default or otherwise) against such defendant, and his own ability to contribute or indemnify, claimed in the third party proceedings;

### Rule 171a

171a. Where the third party has entered an appearance to the third party notice and delivered a statement of defence to the statement of the defendant's claim against the third party,

- (a) he shall be served with all subsequent pleadings and proceedings in the action;
- (b) the third party and the defendant may have production and discovery each from the other in the same manner as between a plaintiff and a defendant;
- (c) notice shall be given to the third party in the same manner as to a party to the action of all examinations for discovery between the plaintiff and the defendant; and
- (d) where the third party has also delivered a statement of defence to the plaintiff's statement of claim, the plaintiff and third party may have production and discovery each from the other. {Amended, O. Reg. 106/75, s. 18.]

NOTES

30.06  
30.07  
30.09 (1)  
(2)  
(3)

Rule 170(b), (c)  
Rules 169(2); 171  
Rules 171b(1); 171b(4)  
Rule 171b(4)  
Rule 171b(5), (6)

CONTINUED

(b) the defendant giving the notice, in case he suffers judgment at any time before trial, is entitled at any time to move for judgment against the third party to the extent of the contribution, indemnity or relief over claimed in the third party proceedings;

(c) if the action is tried and results in favour of the plaintiff, the Judge who tries the action may, at or after the trial, direct such judgment as the nature of the case requires to be entered for the defendant giving the notice against the third party. [Amended, O. Reg. 106/75, s. 16.]

**RULE 169**

(2) The defendant shall deliver his reply, if any, to the third party's statement of defence within ten days from service of such statement of defence.

**Rule 171**

171. Where the third party enters an appearance to the third party notice and delivers a statement of defence to the statement of the defendant's claim against the third party he may also, if so advised, deliver a statement of defence to the plaintiff's statement of claim, to be so entitled, raising therein any defence open to the defendant which has not been raised by the defendant in his statement of defence, and the plaintiff shall thereupon be at liberty to deliver a reply to such statement of defence within ten days after service thereof, and such pleadings shall be included in and form part of the record in the action. [Amended, O. Reg. 106/75, s. 17.]

**Rule 171b**

171b.—(1) After the close of pleadings in the third party issue the defendant or third party shall set the third party issue down for trial at the same sitting of the court for which the action between the plaintiff and defendant was set down, irrespective of the date of the commencement of such sittings.

(2) The party setting the issue down shall serve notice of trial forthwith upon the opposite party and the plaintiff and file the notice with proof of service thereof with the officer with whom the issue was set down within ten days after the issue was set down.

(3) The provisions of rule 248 shall apply mutatis mutandis.

(4) The issue shall be placed on the list for trial next following the action between the plaintiff and defendant and shall be tried at or after the trial of the action as the trial judge may direct.

(5) The third party shall be at liberty to appear at the trial of the action and take part therein in such manner and to such extent as the trial judge may direct.

(6) The third party shall be bound by any judgment or decision in the action. [Amended, O. Reg. 8/76, s. 2.]

**30.06 Effect of Default of Third Party**

Where a third party has been noted in default, the defendant may only obtain judgment against him at the trial of the main action or upon motion to a judge.

**30.07 Reply to Third Party Defence**

A Reply to a Third Party Defence may be delivered by the defendant making the third party claim and, where a Third Party Defence disputes the liability of the defendant to the plaintiff, by the plaintiff.

**30.08 Time for Delivery of Reply to Third Party Defence**

A Reply to a Third Party Defence, if any, shall be delivered within 10 days after delivery of the Third Party Defence.

**30.09 Trial of Third Party Claim**

(1) After the close of pleadings in the third party claim, it shall be set down for trial as an action as provided in Rule 47 without undue delay and, notwithstanding Rule 47.07, it shall be placed on the list for trial next following the main action.

(2) The Third Party Claim shall be tried at, or immediately after the trial of the main action, unless otherwise ordered.

(3) A third party who has delivered a Third Party Defence disputing the liability of the defendant to the plaintiff, shall be at liberty to appear at the trial of the main action and take part therein in such manner and to such extent as the trial judge may direct, and the third party shall be bound by any judgment or decision in the main action.

NOTES**30.10 Appeal from Judgment or Order in the Main Action**

A third party who has delivered a Third Party Defence disputing the liability of the defendant to the plaintiff shall have the same right to appeal from any judgment or order in the main action as if he were a defendant, and shall be entitled to notice of any appeal therefrom.

**30.11 Prejudice or Delay to Plaintiff**

The plaintiff is not to be prejudiced or unnecessarily delayed by reason of a third party claim, and he may apply to the court to impose such terms as may be necessary to prevent such prejudice or delay where that may be done without injustice to the defendant or the third party.

**30.12 Third Party Directions**

Any party affected by a third party claim may apply to the court for directions where necessary in respect of any matter of procedure not otherwise provided for in these rules.

**Rule 17lc**

17lc. A third party who has entered an appearance and delivered a statement of defence shall be notified of all proceedings subsequent to trial and shall have the right to participate therein, and may appeal from any judgment or order as if he were a defendant.

**Rule 17lf**

17lf. Any party affected by the third party proceedings may apply for directions other than those provided for in these rules.

**Rule 173**

173. A plaintiff is not to be prejudiced or unnecessarily delayed by reason of questions between the defendant and the third party in which he is not concerned, and upon the application of the plaintiff the court may impose such terms as may be necessary to prevent delay of the plaintiff where it may be done without injustice to the defendant and third party.

## NOTES

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### 30.13 Claims by Third and Subsequent Parties

(1) A third party may assert against any person, whether or not he is already a party to the main action or to the third party claim, any claim which is properly the subject matter of a third party claim under this rule, by commencing a fourth party claim and the provisions of this rule shall apply to any such claim with any necessary modification.

(2) Personal service of a Fourth Party Claim is not required on a fourth party who is a party to the main action or to the Third Party Claim unless he has failed to deliver a Notice of Intent to Defend or a Statement of Defence in the main action or a Third Party Defence to the Third Party Claim, as the case may be, in which case personal service is required, whether or not he has been noted in default in the main action or in the Third Party Claim, as the case may be.

(3) A fourth party, or any subsequent party, may assert any such claim in a like manner and the provisions of this rule shall apply thereto with any necessary modification.

### 30.14 Application to Counterclaim and Cross-Claim

The provisions of this rule shall apply, with any necessary modification, to the assertion of a third party claim by a defendant to a counterclaim, or by a defendant to a cross-claim.

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### Rule 171d

171d—(1) Where a third party claims to be entitled to contribution or indemnity from or other relief over against another person, he may in the same manner as a defendant, within fifteen days of service of the third party notice upon him, issue and serve a notice upon such person and the plaintiff, and the provisions of all the rules relating to third party procedure shall apply mutatis mutandis.

(2) Where a person served with a notice by a third party in turn claims to be entitled to contribution or indemnity from or other relief over against another person, the provisions of sub-rule (1) hereof shall apply as regards such further person and any other further person or persons served, successively.

(3) Where pursuant to sub-rules (1) and (2) a notice is served on a person already a party to the action, service of the notice may be effected on the solicitor in the action, if any, of the person sought to be made liable as a subsequent party. (Amended, O. Reg. 106/75, s. 19.)

NOTES**RULE 31 DISCOVERY OF DOCUMENTS****31.01 Definitions**

In this rule,

*document* includes any recording of sound, film, photograph, chart, graph, map, plan, survey, any book of account and any information recorded or stored by means of any device;

*subsidiary corporation* means a body corporate that is controlled directly or indirectly by one or more bodies corporate;

*affiliated corporation* means one of two bodies corporate where one of them is the subsidiary of the other or both are subsidiaries of the same corporate body or each of them is controlled by the same person or persons.

**31.02 Scope of Documentary Discovery**(1) *Disclosure*

Every document relating to any matter in issue in an action which is or has been in the possession, custody or control of any party to the action shall be disclosed, as provided in this rule, whether or not privilege is claimed in respect of that document.

(2) *Production for Inspection*

Every document relating to any matter in issue in an action in the possession, custody or control of any party to the action, shall be produced for inspection if requested, as provided in this rule, unless privilege is claimed in respect of that document.

(3) *Insurance Policy*

A party shall disclose and produce for inspection any insurance policy under which any insurer may be liable to satisfy any part or all of any judgment which may be obtained in the action, or to indemnify or reimburse any party for any monies paid by him in satisfaction of the judgment, but no information concerning any such insurance policy shall be admissible in evidence at the trial unless it is relevant to an issue in the action.

**Rule 347**

347. Each party, after the defence is delivered or an issue has been filed, may by notice require the other within ten days to make discovery on oath of the documents that are or have been in his possession, custody or power relating to any matter in question in the action, and to produce and deposit them with the proper officer for the usual purposes and a copy of such affidavit shall be served forthwith after filing. (Amended, O. Reg. 569/75, s. 4.)

### 31.03 Affidavit of Documents

- (1) Unless dispensed with on consent, a party to an action shall, within 10 days after the close of pleadings, deliver to every other party an Affidavit of Documents (Form 31A) disclosing all documents which are or have been in his possession, custody or control relating to any matter in issue in the action.
- (2) The affidavit shall be made by the party or, in the case of a corporation, by an officer, director or employee thereof.
- (3) The affidavit shall contain,
- (a) a list and description of all documents relating to any matter in issue in the action which are in the possession, custody or control of the party and for which he claims no privilege;
  - (b) a list and description of all documents relating to any matter in issue in the action which are in the possession, custody or control of the party and for which he claims privilege and the grounds for any such claim;
  - (c) a list and description of all documents relating to any matter in issue in the action which the party has had in his possession, custody or control, which he cannot now produce because they are no longer in his possession, custody or control, and he shall account for when and how he lost possession, custody or control of them and their present whereabouts, so far as he can say, either from his own knowledge or from his information or belief;
  - (d) a statement by the deponent that the party has not, and has never had, any other documents relating to any matter in issue in the action in his possession, custody or control so far as the deponent knows or believes.
- (4) The affidavit shall be endorsed by the solicitor for the party delivering the affidavit with a certificate that he has explained to the deponent the necessity of making a full and fair disclosure of all relevant documents and that he has no knowledge of any document not disclosed in the affidavit which should have been disclosed.

### NOTES

### Rule 347

347. Each party, after the defence is delivered or an issue has been filed, may by notice require the other within ten days to make discovery on oath of the documents that are or have been in his possession, custody or power relating to any matters in question in the action, and to produce and deposit them with the proper officer for the usual purposes and a copy of such affidavit shall be served forthwith after filing. [Amended, O. Reg. 569/75, s. 4.]

NOTES

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**31.04 Inspection of Documents**

(1) A party is entitled, at any time, to inspect any document referred to in the originating process, the pleadings, or any affidavit filed by any other party, which are in his possession, custody or control, by serving on such party a Request to Inspect Documents (Form 31B).

(2) A Request to Inspect Documents may also be used to obtain the inspection of any document listed in the Affidavit of Documents of any party as being in his possession, custody or control and which is not privileged.

(3) A party upon whom a Request to Inspect Documents is served shall forthwith serve on the party making such request, a notice stating a time between 9:30 a.m. and 4:30 p.m. and a date within 5 days from the service of the Request to Inspect Documents on which the documents may be inspected at the office of his solicitor, or some other convenient place, and shall at the time and place so named make the documents available for inspection.

(4) The court may at any time order production for inspection of documents generally or of any particular document in the possession, custody or control of any party for which no privilege is claimed. Where privilege is claimed for any document, the court may inspect the document to determine the validity of such claim.

(5) Where a document is produced for inspection, the party inspecting the document is entitled to make a copy thereof at his own expense unless the person having possession, custody or control of the document agrees to make a copy for the party inspecting the document, if it can be reproduced, in which case he shall be reimbursed for the cost of so doing.

(6) Where a document may only become relevant after the determination of one or more of the issues in the action and the production of any such document for inspection prior to that determination would result in a serious prejudice to any party, he may apply to the court for leave to withhold the production thereof until after any such issue has been determined.

Rule 350  
 Rule 350  
 Rule 348  
 Rules 196; 350  
 Rule 351

**Rule 350**

350.—(1) A party is entitled to obtain the production for inspection of any document referred to in a special endorsement on a writ of summons, the pleadings or affidavits of the opposite party by giving notice to his solicitor, and is entitled to take copies of such documents when so produced for inspection (Form 32).

(2) The party to whom such notice is given shall forthwith deliver to the party giving it a notice stating a time within two days from the delivery thereof at which the document may be inspected at the office of his solicitor, and shall at the time named produce the document for inspection (Form 33).

(3) Inspection may also be ordered at such place as the court directs.

**Rule 348**

348. The court may at any time order production and inspection of documents generally or of any particular document in the possession of any party, and, if privilege is claimed for any document, may inspect the document to determine the validity of such claim.

**Rule 196**

196. A party entitled to copies of or extracts from any document in possession of another party may be directed to pay for such copy at the rate of ten cents per folio, if the request for such copy is deemed unreasonable, or the solicitor of the party producing the document is at liberty to give notice that the party requiring such copy is at liberty at some reasonable time and place himself to make it, in which case the party producing is not entitled to any fee in respect thereof.

**Rule 351**

351. If the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the court, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the action, or that for any other reason it is desirable that any issue or question in dispute should be determined before deciding upon the right to the discovery or inspection, may order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

## NOTES

### **31.05 Effect of Disclosure or Production for Inspection**

(1) The disclosure or the production of a document for inspection shall not be taken as an admission of the relevance or admissibility of the document.

(2) Any document listed in his Affidavit of Documents or produced for inspection by a party shall, without notice, summons or order, be taken by him to his examination for discovery and to the trial of the action, unless the parties otherwise agree.

### **31.06 Where Affidavit Incomplete or Privilege Improperly Claimed**

Where it is made to appear that any document in the possession, custody or control of a party may have been omitted from his Affidavit of Documents, or that a claim of privilege may have been improperly made therein, the court may,

- (a) order cross-examination upon the Affidavit of Documents;
- (b) order delivery of a further and better Affidavit of Documents;
- (c) order the disclosure or production for inspection of any document, or any part of a document, which is not privileged; and
- (d) inspect any document for the purpose of determining validity of any claim of privilege.

### **31.07 Documents or Errors Subsequently Discovered**

Where any document relating to a matter in question in the action comes into the possession, custody or control of any party after delivering his Affidavit of Documents, or he subsequently discovers that the affidavit is inaccurate or incomplete, he shall deliver forthwith a supplementary affidavit specifying the extent to which his Affidavit of Documents requires qualification and disclosing any additional documents.

### **Rule 348**

348. The court may at any time order production and inspection of documents generally or of any particular document in the possession of any party, and, if privilege is claimed for any document, may inspect the document to determine the validity of such claim.

**31.08 Effect of Failure to Disclose or Produce for Inspection**

(1) Where a party fails to disclose any document in his Affidavit of Documents or fails to produce any document for inspection in compliance with this rule or any order made thereunder, he may not use such document at the trial, except by leave of the trial judge.

(2) Where a party fails to deliver an Affidavit of Documents or produce any document for inspection in compliance with this rule, or fails to comply with any order made under this rule, the court may,

- (a) revoke or suspend his right, if any, to initiate or continue any examination for discovery;
- (b) dismiss his action, if he is a plaintiff, or strike out his Statement of Defence, if he is a defendant; and
- (c) impose such terms as to costs or otherwise, as to the court may seem just.

**Rule 352**

352.—(1) If a party fails to comply with any notice or order for production or inspection of documents, he is liable to attachment and is also liable, if a plaintiff, to have his action dismissed, and, if a defendant, to have his defence, if any, struck out.

(2) Service of the notice of motion upon the solicitor of the party is, unless the court otherwise directs, sufficient.

NOTES**31.09 Effect of Failure to Abandon Claim of Privilege**

Where a party has, at any time, claimed privilege in respect of any document and fails to abandon that claim by notice in writing and by delivering a copy of such document or producing it for inspection not less than 10 days before trial, he may not use such document at the trial, except to impeach the testimony of a witness or by leave of the trial judge.

**31.10 Notice to Admit Authenticity, Dispatch or Receipt of Specified Documents**

(1) Any party to an action may, at any time, require any other party thereto to admit the authenticity or dispatch or receipt of any particular document by serving upon him a notice to that effect.

(2) Where practicable, a copy of any such document shall be served with the notice, unless it appears from the Affidavit of Documents, if any, of the party to be served, that a copy thereof is in his possession.

(3) Unless the party upon whom such notice has been served, within 30 days thereafter, serves notice that he does not admit the authenticity or dispatch or receipt thereof, and that he requires it to be proved at the trial, he shall be deemed to admit that any such document described in the Affidavit of Documents,

(a) as an original document, was printed, written, signed or executed as it purports to have been;

(b) as a copy, is a true copy;

(c) as a copy of a letter, telegram, cablegram or telecommunication, the original was dispatched to the addressee or received by him, as the case may be.

NOTESCONTINUED

(4) Where the authenticity or dispatch or receipt of any document is so admitted by any party, he may not thereafter put in issue the authenticity or dispatch or receipt of that document without leave of the court.

**31.11 Documents in the Possession of a Person Not a Party**

(1) Where a document is in the possession, custody or control of a person not a party to the action, any party may apply to the court, on notice to such person and to every other party, for an order for the production for inspection of any such document which is not privileged.

(2) The court may order a corporate party to disclose all relevant documents in the possession, custody or control of a subsidiary or affiliated corporation, and to produce for inspection all such documents which are not privileged.

(3) No order shall be made for the production for inspection of any such document unless the court is satisfied that the document is relevant to a material issue in the action and that it would be inequitable to require the applicant to proceed to trial without having discovery of that document.

(4) Where privilege is claimed for any such document, or where the court is in doubt as to the relevance of, or the necessity for the discovery of any such document, the court may inspect the document.

**31.12 Any Document may be Impounded for Safe Keeping**

The court may order that any relevant document be deposited for safe keeping with the registrar and thereafter that document shall not be inspected by any person other than a party to the action, or his solicitor, except by leave of the court.

**Rule 349**

349. Where a document is in the possession of a person not a party to the action and the production of such document at a trial might be compelled, the court may at the instance of any party, on notice to such person and to the opposite party, direct the production and inspection thereof, and may give directions respecting the preparation of a certified copy that may be used for all purposes in lieu of the original.

**RULE 32 EXAMINATION FOR DISCOVERY****32.01 Definitions**

The definitions contained in Rule 31.01 also apply to this rule.

**32.02 Who May Examine and Be Examined**

(1) Any party to an action may examine for discovery, once, without leave, any other party thereto who is adverse in interest to him.

(2) Where the party to be examined is a corporation, the examining party may examine an officer, director or employee thereof on behalf of the corporation; provided, however, that the corporation may apply to the court at any time prior to the examination for an order requiring the examining party to examine some other officer, director or employee thereof. Where an officer, director or employee of a corporation has been so examined, no other officer, director or employee thereof may be so examined without leave of the court.

(3) Where an action is brought by or against a partnership or a sole proprietorship in the firm name, any person who was, or is alleged to have been, a partner or the sole proprietor, as the case may be, at any relevant time, may be examined on behalf of the partnership.

(4) Where an action is brought by or against an unincorporated association, an officer or employee may be examined on behalf of the association; provided, however, that the association may apply to the court at any time prior to the examination for an order requiring the examining party to examine some other officer or employee thereof. Where an officer or employee of an association has been so examined, no other officer or employee may be so examined without leave of the court.

**Rule 326(1)  
Rule 326(2), (3), (4)****Rule 326**

326.—(1) A party to an action, whether plaintiff or defendant, may, without order, be orally examined before the trial touching the matters in question by any party adverse in interest, and may be compelled to attend and testify in the same manner, upon the same terms, and subject to the same rules of examination as a witness except as hereinafter provided.

(2) In the case of a corporation, any officer or servant of such corporation may, without order, be orally examined before the trial touching the matters in question by any party adverse in interest to the corporation, and may be compelled to attend and testify in the same manner and upon the same terms and subject to the same rules of examination as a witness except as hereinafter provided.

(3) A corporation may apply to the court to have examined an officer or servant in lieu of the officer or servant selected to be examined.

(4) After the examination of an officer or servant of a corporation, a party is not at liberty to examine any other officer or servant without an order.

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Rule 331  
 Rule 334  
 Rule 333(2)  
 Rule 333(1)

(5) Where an action is brought by or against a party under disability, the litigation guardian or committee, as the case may be, may be examined in place of the person under disability, or, at the option of the examining party, the person under disability if he is competent to give evidence; provided, however, that where the litigation guardian or committee is the Official Guardian or the Public Trustee, he may only be examined with leave of the court.

(6) Where an action is brought by or against an assignee, the assignor may be examined in addition to the assignee.

(7) Where an action is brought by or against a trustee of the estate of a bankrupt, the bankrupt may be examined in addition to the trustee.

(8) Where an action is brought or defended for the immediate benefit of a person who is not a party thereto, that person may be examined in addition to the party bringing or defending the action, as the case may be.

**Rule 331**

331.—(1) Where an infant is a party, any party adverse in interest may examine the next friend or guardian of the infant or, at his option, the infant, if he is competent to give evidence.

(2) Where a child of tender years does not understand the nature of an oath, he may nevertheless be examined for discovery if possessed of sufficient intelligence to be examined and if he understands the duty of speaking the truth, but his examination shall not be used as evidence at the trial pursuant to rule 329 unless otherwise ordered by the trial judge.

(3) Where a mentally incompetent person not so found by inquisition or judicial declaration is a party, any party adverse in interest may examine the next friend or guardian of the mentally incompetent person or, at his option and unless otherwise ordered, the mentally incompetent person if he is competent to give evidence.

(4) Where a mentally incompetent person not so found by inquisition or judicial declaration does not understand the nature of an oath, he may nevertheless be examined for discovery if possessed of sufficient intelligence to be examined and if he understands the duty of speaking the truth, but his examination shall not be used as evidence at the trial pursuant to rule 329 unless otherwise ordered by the trial judge.

(5) Where a mentally incompetent person who has been so found is a party, any party adverse in interest may examine his committee. (Amended, O. Reg. 86/73, s. 29.)

**Rule 334**

334. Where an action is brought by an assignee, the assignor or any officer or servant of the corporation, where the corporation is the assignor, may without order be examined for discovery.

**Rule 333**

333.—(1) Where an action is prosecuted or defended for the immediate benefit of a person or a corporation, such person or any officer or servant of such corporation may without order be examined for discovery.

(2) For the purpose of this rule, a bankrupt, an officer or servant of a bankrupt corporation or a trustee under the Bankruptcy Act shall be deemed to be a person or corporation for whose immediate benefit the action is prosecuted or defended.

NOTES**32.03 When Proceedings for Examination may be Initiated**

(1) Proceedings for the examination of a plaintiff for discovery may only be initiated after the examining party has delivered his Statement of Defence and, unless dispensed with on consent, his Affidavit of Documents.

(2) Proceedings for the examination of a defendant for discovery may only be initiated after the defendant has delivered his Statement of Defence and, unless dispensed with on consent, the examining party has delivered his Affidavit of Documents, or after the defendant has been noted in default.

**32.04 Form of Examination for Discovery**

(1) Subject to paragraph (2), an examination for discovery may take the form of an oral examination or, at the option of the examining party, an examination by written questions and answers, but the examining party is not entitled to subject any person to both forms of examination except by leave of the court.

(2) Where a person is liable to be examined by more than one party, the examination for discovery shall take the form of an oral examination, unless otherwise agreed by all of the parties entitled to examine such person.

**32.05 Oral Examination by More than One Party**

Where any party is liable to be orally examined for discovery by more than one party, there shall be but one examination. Any adverse party may initiate the examination. The party who examined first may cover the common ground and all matters relevant to the issues between himself and the party being examined. Any other party may then cover any common ground not already covered, and all matters relevant to the issues between himself and the party being examined.

## Rule 335

335. Examination for discovery may take place at any time after the statement of defence of the party examining or to be examined has been delivered or after the party to be examined has made default in appearance or after the pleadings have been noted as closed as against him, and the examination of a party to an issue may take place at any time after the issue has been filed.

NOTES**32.06 Scope of Examination**

(1) Any person being examined for discovery shall answer, to the best of his knowledge, information and belief, any proper question as to any matter or document relevant to any issue in the action and no question may properly be objected to on the ground that,

- (a) the information sought is evidence;
- (b) the information sought is the name and address of a potential witness, except as provided in paragraph (2);
- (c) the question is cross-examination; provided, however, that the question is relevant to an issue in the action and is not directed solely to the credibility of the witness; or
- (d) the question is cross-examination on the affidavit of documents of the party being examined.

(2) A party may obtain discovery of any findings, opinions and conclusions of an expert communicated to the party being examined and relevant to an issue in the action; provided, however, that the party being examined need not disclose such information nor the name and address of the expert where,

- (a) the only findings, opinions and conclusions of the expert relevant to an issue in the action were made or formed by him in preparation for contemplated or pending litigation and for no other purpose; and
- (b) the party being examined undertakes that he will not call the expert as a witness at the trial.

NOTESCONTINUED

(3) A party may obtain discovery of the existence and contents of any insurance policy under which any insurer may be liable to satisfy part or all of any judgment which may be obtained in the action or to indemnify or reimburse any party for any monies paid by him in satisfaction of the judgment, but such information shall not be admissible in evidence at the trial unless it is relevant to an issue in the action.

(4) Where any information may only become relevant after the determination of one or more of the issues in the action and the disclosure of any such information prior to that determination would seriously prejudice any party, he may apply to the court for leave to withhold such information until after any such issue has been determined.

**32.07 Effect of Refusal to Answer**

Where any party being examined for discovery has refused to answer any proper question, or has refused to answer any question on the grounds of privilege, he may not introduce at the trial the information so refused on discovery, except by leave of the trial judge.

**Rule 351**

351. If the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the court, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the action, or that for any other reason it is desirable that any issue or question in dispute should be determined before deciding upon the right to the discovery or inspection, may order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

NOTES**32.08 Effect of Counsel Answering**

Any question on an examination for discovery shall be answered by the party being examined but, where there is no objection, the question may be answered by counsel. Any such answer shall be deemed to be the answer of the person being examined unless, before the conclusion of his examination, he expressly repudiates, contradicts or qualifies that answer.

**32.09 Information Subsequently Obtained**

(1) Where a party subsequently obtains information by means of which he knows that his answer to any question on his examination for discovery was incorrect or incomplete when made, or that his answer, which was correct and complete when made, is no longer correct or complete, he shall forthwith furnish such information in the form of an affidavit to the examining party and to every other party.

(2) Where any party has failed to comply with the provisions of paragraph (1), he may not introduce at the trial the information subsequently obtained, except by leave of the trial judge.

**32.10 Further Discovery with Leave**

(1) The court may grant leave, upon such terms as may seem just, to examine for discovery any person who has, or is likely to have, some information relevant to a material issue in the action, where such person,

- (a) was, at any relevant time, an employee, agent, partner or spouse of a party;
- (b) was, at any relevant time, an officer, director or auditor of a corporate party;
- (c) is, or was, at any relevant time, an officer, director or employee of a corporation that was, at such time, a subsidiary or affiliate of a corporate party; or

NOTES

## (CONTINUED)

(d) is a potential witness, other than an expert retained by a party adverse in interest to the applicant in preparation for contemplated or pending litigation.

(2) An order under paragraph (1) shall not be made unless the court is satisfied that the applicant has been unable to obtain such information from those he is entitled to examine for discovery, or from the person sought to be examined, and that it would be inequitable to require the applicant to proceed to trial without having the opportunity of examining that person.

(3) A party who examines any person pursuant to an order under this sub-rule shall serve every party who attended, or was represented, on the examination with a copy of the transcript thereof free of charge and, unless otherwise expressly ordered, the examining party shall not be entitled to recover from any other party his costs of such examination.

(4) For the purpose of paragraph (2) of Rule 32.11, the examination of any person under this sub-rule shall not be treated as the examination of a party or on behalf of or in place of a party.

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Rule 329  
 Rule 329  
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 Rule 331

### 32.11 Use of Examination for Discovery at Trial

(1) At the trial of an action, any party may use in evidence, if otherwise admissible, all or any part of the examination for discovery of an adverse party as an admission made by that party.

(2) The evidence of any person examined for discovery on behalf of, or in place of, a party may be used, if otherwise admissible, against that party unless otherwise ordered by the trial judge.

(3) Any examination for discovery may be used at the trial for the purpose of impeaching the testimony of the deponent as a witness in the same manner as any previous inconsistent statement made by a witness may be used.

(4) Where only part of an examination is introduced into evidence, any adverse party may request the introduction of any other part of the examination which qualifies or explains the part introduced.

(5) Where a party introduces in evidence all or any part of the examination of any adverse party, he may rebut that evidence by introducing any other admissible evidence.

(6) The evidence of a party under disability taken on an examination for discovery may only be used at the trial by leave of the trial judge.

(7) Where the deponent has died or is unable to attend at the trial or to testify because of age, infirmity, illness, or where for any other sufficient reason his attendance cannot be obtained or compelled, the trial judge may allow the examination to be used for any purpose by any party.

(8) An examination for discovery may be used in a subsequent action involving the same subject matter where the parties to the subsequent action include both the party so examined and the examining party or their successors in interest, in the same manner and to the same extent as in the original action.

### Rule 329

329. At the trial of an action or issue, any party may use in evidence, if otherwise admissible, any part of the examination of an opposite party and of an officer or servant of a corporation that is an opposite party, but the judge may look at the whole of the examination, and, if he is of opinion that any part is so connected with the part to be so used that the last-mentioned part ought not to be used without such other part, he may direct such other part to be put in evidence.

### Rule 331

331.—(1) Where an infant is a party, any party adverse in interest may examine the next friend or guardian of the infant or, at his option, the infant, if he is competent to give evidence.

(2) Where a child of tender years does not understand the nature of an oath, he may nevertheless be examined for discovery if possessed of sufficient intelligence to be examined and if he understands the duty of speaking the truth, but his examination shall not be used as evidence at the trial pursuant to rule 329 unless otherwise ordered by the trial judge.

(3) Where a mentally incompetent person not so found by inquisition or judicial declaration is a party, any party adverse in interest may examine the next friend or guardian of the mentally incompetent person or, at his option and unless otherwise ordered, the mentally incompetent person if he is competent to give evidence.

(4) Where a mentally incompetent person not so found by inquisition or judicial declaration does not understand the nature of an oath, he may nevertheless be examined for discovery if possessed of sufficient intelligence to be examined and if he understands the duty of speaking the truth, but his examination shall not be used as evidence at the trial pursuant to rule 329 unless otherwise ordered by the trial judge.

(5) Where a mentally incompetent person who has been so found is a party, any party adverse in interest may examine his committee.  
 [Amended. O. Reg. 36/73, s. 29.]

33

33.01  
33.02  
33.03(1)  
(2)  
33.04

Rules 336; 344(1); 345  
Rules 336; 344(1)  
Rules 229(1); 336  
Rule 344(2)  
Rule 336

### RULE 33 PROCEDURE ON ORAL EXAMINATIONS

#### 33.01 Place of Examination

Where the person to be examined resides in Ontario, the examination shall take place in the county in which he resides, unless the court otherwise orders.

#### 33.02 Where Appointment to be Obtained

Where the person to be examined resides in Ontario, the examining party shall obtain an appointment from an official examiner in the county in which the examination is to take place.

#### \*33.03 How Attendance Required

(1) Where the person to be examined is a party to the proceeding, a Notice of Appointment (Form 33A) shall be served upon him personally, unless he has a solicitor of record, in which case the Notice shall be served upon that solicitor.

(2) Where the person to be examined is not a party, he shall be personally served with a Summons to Witness (Form 33B) instead of a Notice of Appointment and paid proper conduct money, unless he is to be examined on behalf of a corporate party and is an officer, director or employee thereof, in which case it shall be sufficient to serve a Notice of Appointment on the solicitor of record for the corporate party.

(3) A Summons to Witness shall be served by leaving a copy thereof with the witness personally and, at the same time, paying or tendering to him the proper conduct money, and it shall not be necessary for the process server to produce the original or have it with him.

#### 33.04 Length of Notice Required

Where the person to be examined resides in Ontario, he shall be given not less than 7 days notice of the time and place of the examination, unless the court otherwise orders.

#### Rule 336

336.—(1) A person within Ontario liable to be examined for discovery shall attend for examination for discovery before the proper officer in the county in which he resides upon service of an appointment upon his solicitor, or where any such person is an officer or servant of a corporation party to an action upon the solicitor of the corporation, seven days before the day appointed for the examination.

(2) The solicitor shall forthwith communicate the appointment to the person required to attend. [Amended, O. Reg. 628/76, ss. 10, 11.]

(3) The attendance of a person may also be required under rules 344 and 345.

#### Rule 344

344.—(1) Any party who is liable to be examined may be required to attend before the proper officer in the county in which he resides, for examination, upon being served with an appointment. [Amended, O. Reg. 628/76, s. 12.]

(2) Any person not a party but liable to be examined shall be served with a subpoena and paid the proper conduct money.

#### Rule 345

345. An order may be made for the examination of any person liable to be examined as aforesaid before any other person or in any other county.

#### Rule 229

229.—(1) Where a person has made an affidavit of merits or an affidavit to be used upon a motion or at a trial or on a reference, he may be cross-examined thereon before any officer having jurisdiction in the county in which the witness resides, upon the solicitor of the party on whose behalf the affidavit has been filed being served with an appointment two days before the day appointed for the cross-examination.

#### \*Rule 229

(2) The solicitor shall forthwith communicate the appointment to the person required to attend.

## PROCEDURE ON ORAL EXAMINATIONS

### 33.05 Notice to Other Parties

Every other party to the proceeding shall be given the same notice of the time and place of the examination as that required to be given to the person being examined.

### 33.06 Person Examined to be Sworn

(1) The person being examined shall be sworn before he is examined and, where the examination is conducted in Ontario, the oath may be administered by any commissioner for taking affidavits in Ontario.

\* (2) Where the person being examined does not understand the language or is deaf or mute, it shall be the responsibility of the person being examined to provide, at the expense of the examining party, a competent and independent interpreter who, before the person to be examined is sworn, shall be sworn to accurately interpret the administration of the oath and the questions to be put to the person being examined and his answers thereto.

### 33.07 Where Person to be Examined Resides out of Ontario

(1) Where the person to be examined resides out of Ontario, the court shall determine,

- (a) the place of examination;
- (b) the person before whom the examination is to be conducted; and
- (c) the length of notice to be given.

(2) Where the person to be examined is not a party, and resides out of Ontario, the court shall fix the amount of conduct money to be paid to him and, if requested, the court shall direct the issuance of a Letter of Request, as provided in Rule 53.

(3) Where the examination is conducted out of Ontario, the oath may be administered by any commissioner appointed by the court for taking evidence out of Ontario, any commissioner for taking affidavits in Ontario, or by any person authorized to take affidavits in the jurisdiction where the examination is conducted.

### Rule 229 \*

(3) The attendance of such a person may also be required under rules 844 and 845.

(4) Where any such person resides out of Ontario the court may order that such cross-examination be taken at such place and in such manner as seems just and convenient, and service of the order and of all papers necessary to obtain the cross-examination may be made on the solicitor of the party on whose behalf the affidavit has been filed. [Amended, O. Reg. 628/76, ss. 3-5.]

### Rule 327

327. Where a party to be examined is out of Ontario, the court may order the examination to be taken at such place and in such manner as seems just and convenient, and service of the order and of all papers necessary to obtain the examination may be made on the solicitor of the party. [Amended, O. Reg. 628/76, s. 8.]

### Rule 328

328. The court may order an examination for discovery at such place and in such manner as are deemed just and convenient of an officer or servant residing out of Ontario of any corporation party to an action, and service of the order and of all papers necessary to obtain such examination may be made upon the solicitor for such party. [Amended, O. Reg. 628/76, s. 9.]

### \*

### Rule 282

282. Where a witness does not understand the English language, the commission shall be executed with the aid of an interpreter nominated by the commissioner and sworn to interpret truly the questions to be put in English.

NOTES

33.08 (1)  
 (3)  
 33.09

Rule 340  
 Rule 341  
 Rules 332; 338

### PROCEDURE ON ORAL EXAMINATIONS RULE 33 Rule 340

#### **33.08 Production of Documents on Examination**

(1) The person to be examined shall bring to the examination and produce for inspection all documents in his possession, custody or control, which are not privileged, that he is required to produce by Rule 31.05 (2) or by the Notice of Appointment or the Summons to Witness served upon him, as the case may be.

(2) Where it is not practicable for the person being examined to bring all such documents with him to the examination, he shall make them available for inspection by the examining party at some other mutually convenient time and place prior to the examination.

(3) Where any person admits, upon his examination, that he has in his possession, custody or control any other document relevant to the matters in question in the proceeding, which is not privileged, he shall produce it for inspection by the examining party forthwith, if he has the document with him; and, if not, within 2 days thereafter.

#### **33.09 Re-Examination**

Any person being examined or cross-examined may be re-examined at the conclusion of the examination or cross-examination, by his own counsel, or by any party adverse in interest to the examining party, and such re-examination shall be proceeded with immediately after the examination or cross-examination.

#### Rule 341

340. The person to be examined or any party to the action shall, if so required by the subpoena or notice, produce on the examination all books, papers and documents relating to the matters in issue that he could be required to produce at a trial.

#### Rule 332

341. Where a person admits, upon his examination, that he has in his custody or power any such document, the examiner may direct him to produce it for the inspection of the party examining, and for that purpose allow a reasonable time.

#### Rule 338

332. Any person examined for discovery may be further examined on his own behalf, or on behalf of the corporation whose officer or servant he is, in relation to any matter respecting which he has been so examined, and such explanatory examination shall be proceeded with immediately after the examination in chief.

#### Rule 338

338. Any witness examined is subject to cross-examination and re-examination, and the examination, cross-examination and re-examination shall be conducted as nearly as may be as at a trial.

33.10(1)  
(2)

Rule 342  
Rule 343

NOTES**33.10 Objections**

(1) Where any person being examined objects to answering any question put to him, the question and the nature of the objection and a brief statement of the reason therefor shall be recorded.

(2) Subject to review on a motion to the court, an Official Examiner may make rulings in respect of the conduct of an examination; but, a ruling as to the propriety of any question, to which objection has been taken, may only be obtained by applying to the court.

(3) Any question objected to may, on consent, be answered subject to the objection, in which case a ruling shall be obtained from the court before such evidence is used at a trial or hearing.

**Rule 342**

342. If a person under examination objects to a question put to him, the question and the objection shall be noted, and the validity of such objection shall be decided by the examiner, whose decision shall also be noted.

**Rule 343**

343. Any direction or ruling of the examiner is subject to review upon any motion with respect to such examination without an appeal.

**NOTES****33.11 Protective Order**

(1) Any examination may be adjourned by the person being examined or by any party present or represented on the examination for the purpose of applying to the court for directions as to the continuation of it, or for an order terminating the examination or limiting the scope thereof where,

- (a) the right to examine is being abused by an excess of improper questions or interfered with by an excess of improper interruptions or objections;
- (b) the examination is being conducted in bad faith, or in an unreasonable manner so as to annoy, embarrass or oppress the person being examined;
- (c) the examination is excessive in length having regard to the nature of the proceeding;
- (d) many of the answers to the questions are evasive, unresponsive or unduly prolix; or
- (e) there has been a neglect or improper refusal to produce any relevant document in the possession, custody or control of the person being examined, which is not privileged, that he was required to produce by these rules or by the Notice of Appointment or the Summons to Witness served upon him, as the case may be.

(2) On any such motion, the court may order the person whose improper conduct necessitated the motion or the person who improperly brought the motion, as the case may be, to personally pay forthwith the costs of the motion, any costs thrown away and the costs of any continuation of the examination, and fix those costs, or make such other order as may seem just.

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## 33.12 Penalty for Refusal or Neglect

Where any person refuses or neglects to attend at the time and place appointed for his examination or refuses to be sworn, or to answer any proper question, or to produce any document which he is bound to produce, or to comply with any protective order, the court may,

- (a) where any objection is held to be improper, order the person being examined to re-attend at his own expense and answer that question and any proper questions arising from his answer thereto;
- \* (b) if he is a party, or an officer, director or employee of a corporate party, dismiss the proceeding or strike out the Statement of Defence, as the case may be;
- (c) strike out his evidence, or any part thereof, including any affidavit made by him; and
- (d) make such other order as may seem just.

**Rule 229** (5) Where any person refuses or neglects to attend at the time or place appointed for his cross-examination on his affidavit, or refuses to be sworn or to answer any proper question put to him, proceedings may forthwith be had for attachment and the court may also, or in lieu thereof, order that the affidavit be struck out. [Amended, O. Reg. 285/71, s. 4.]

## Rule 227

227.—(1) An attendance on a motion, or on an appointment before a master, registrar or other officer, for half an hour next immediately following the return thereof, shall be deemed a sufficient attendance, and no such motion shall be made or matter be proceeded with ex parte, before the expiry of such half-hour. [Amended, O. Reg. 520/78, s. 11.]

(2) Notwithstanding this rule, the Taxing Officer may proceed ex parte after the expiration of fifteen minutes from the time appointed. [Amended, O. Reg. 451/77, s. 2.]

## Rule 330

330. Where any person refuses or neglects to attend at the time and place appointed for his examination, or refuses to be sworn or to answer any proper question put to him, proceedings may forthwith be had for attachment, and the court may also or in lieu thereof, dismiss the action where any such person is a plaintiff or an officer or servant of a corporation plaintiff or strike out the defence, if any, where any such person is a defendant or an officer or servant of a corporation defendant. [Amended, O. Reg. 285/71, s. 6.]

★

## Rule 277

277. If a party for whose examination an order has been made or a commission has issued refuses to attend before the examiner or commissioner, judgment may pass against him.

★

## Rule 229

(2) The solicitor shall forthwith communicate the appointment to the person required to attend.

NOTES

33.13

33.14

33.15

Rule 339

Rule 339

Rule 339

**33.13 Examination to be Recorded**

On every examination, the Official Examiner, or his designee, shall record the entire examination in question and answer form, unless the court otherwise orders, or the parties otherwise agree.

**33.14 Typewritten Transcript**

(1) When requested to do so by any party to the proceeding, the Official Examiner, or his designee, shall forthwith prepare a typewritten transcript of the examination.

(2) The transcript shall be certified as correct by the Official Examiner, or by the person recording the examination, but need not be read to or signed by the person being examined.

(3) A copy of the transcript so certified shall be receivable in evidence, if otherwise admissible, without proof of the signature of the Official Examiner or of the person recording the examination.

(4) Forthwith after the transcript is prepared, the Official Examiner shall send one copy thereof to each party to the proceeding who has ordered a transcript and, if requested, provide an additional copy for the use of the court.

**33.15 When Transcript to be Filed**

(1) A copy of the transcript for the use of the court need only be filed at the trial or hearing of the proceeding and then only where reference is made thereto by any party to the proceeding; provided, however, that where it is intended to make reference thereto on the hearing of any motion or application, a copy of the transcript for the use of the court shall be filed in the Court Office at the place where the motion or application is to be heard, not later than 4 p.m. on the day preceding the hearing thereof.

(2) The transcript of an examination shall not be given to, or read by, the trial judge until reference thereto is made by any party at the trial.

**Rule 339**

339.—(1) The examination, unless otherwise ordered or agreed upon, shall, if the examiner is a shorthand writer or a shorthand writer is available, be taken in shorthand by the examiner or by a shorthand writer approved and duly sworn by him and shall be taken down by question and answer, and it is not necessary for the depositions to be read over to, or signed by, the person examined.

(2) A copy of the depositions so taken, certified by the person taking them as correct, and, if such person be not the examiner, also signed by the examiner, shall be received in evidence saving all just exceptions.

(3) The depositions taken by the examiner shall, upon payment of his fees, be returned to and filed in the office in which the proceedings are carried on.

NOTES**33.16 Examinations on Consent**

- (1) Notwithstanding the foregoing provisions of this rule, the person being examined and all parties to the proceeding entitled to notice of the examination may consent to the time and place of the examination, and to dispense with notice thereof, or they may consent to the length and form of notice to be given.
- (2) All of the applicable provisions of this rule shall apply to any such examination, except to the extent that they have been waived by any such consent.

**33.17 Application of the Rule**

Subject to the provisions of any other rule, the provisions of this rule shall apply to the oral examination or cross-examination, other than in court, of any person or party liable to be so examined under these rules.

**Rule 337**

337. Rules 338 to 346 apply to the examination of a witness upon a motion or under an order and to cross-examination upon affidavits and to all examinations for discovery.

**NOTES****RULE 34 PROCEDURE ON WRITTEN EXAMINATIONS****34.01 Questions**

An examination for discovery by written questions and answers shall be conducted by the examining party serving a list of the questions to be answered upon the party to be examined, and upon every other party.

**34.02 Answers**

Written questions shall be answered by the affidavit of the party being examined, and that affidavit shall be served on the examining party, and upon every other party within 15 days after service of the list of questions.

**34.03 Objections**

An objection to answering any question shall be made in the affidavit of the party being examined and a brief statement of the reason therefor shall be stated therein.

NOTES**34.04 Failure to Answer**

- (1) Where, upon receipt of the answers, the party examining is not satisfied with the answer to any particular question or where the answer to some particular question suggests a new line of questioning, the examining party may, within 10 days of the receipt of that answer, submit a further list of written questions which shall be answered within 15 days thereafter.
- (2) Where the party being examined fails to answer any question or where his answer to any question is insufficient, the court may, upon such terms as may seem just, make an order requiring him to answer such question, or to make a further answer thereto, or to answer any other question either by affidavit or on oral examination.
- (3) Where it appears from reading all the answers to the written questions that they are evasive, unresponsive or otherwise unsatisfactory, the court may make an order requiring the party so examined to submit to oral examination upon such terms as to costs or otherwise as may seem just.

**34.05 Penalty for Refusal or Neglect**

Where any person refuses or neglects to answer any question properly put to him on a written examination or to produce any document he is bound to produce, he and the party on whose behalf he is being examined shall be liable to the same penalty for such refusal or neglect as in the case of an oral examination.

35.01 (1)  
 (2)  
 (3)  
 (4)

Rule 372(1)  
 Rule 372(1), (2)  
 Rule 372(1)  
 Rule 372(2)

### RULE 35 INSPECTION AND PRESERVATION OF PROPERTY

#### 35.01 Order for Inspection

(1) Where the inspection of any real or personal property appears to be necessary for the proper determination of any issue in an action, the court may, upon the motion of any party, make an order for the inspection of any such property by any party or his duly authorized representative.

(2) For the purpose of any such inspection, the court may,

(a) authorize the entry upon any real property in the possession of any party or in the possession of any person not a party;

(b) permit the measuring, surveying, or photographing of the property in question, or of any particular object or operation thereon; or

(c) permit the taking of any samples, the making of any observations or the conducting of any tests or experiments in respect of such property.

(3) The order shall specify the time, place and manner of making the inspection and may prescribe such other terms and conditions, including the payment of compensation, as to the court may seem just.

(4) Where the property to be inspected is in the possession of any person not a party, no order for inspection shall be made without notice to such person, unless the giving of such notice, or the time required to do so, might entail serious consequences to the party seeking the order.

#### Rule 372

372.—(1) The court may, upon the application of any party and upon such terms as seem just, make any order for the detention or preservation of property, being the subject of the action, or for the inspection of any property, the inspection of which is necessary for the proper determination of the question in dispute, and for all or any of the purposes aforesaid may authorize any person or persons to enter upon or into any land or building in the possession of a party and may authorize any samples to be taken, or any observation to be made or experiment to be tried, that may seem necessary or expedient for the purpose of obtaining full information or evidence.

(2) The court may also on notice to any person not a party to the action make an order authorizing entry upon or into any lands or building in the possession of such person for the purposes of such inspection.

35.02  
35.03  
35.04

Rules 369; 372(1)  
Rule 369  
Rule 371

#### \* 35.02 Order for Preservation

The court may make an order for the custody, detention or preservation of any personal property in question in the action or relevant to any issue in the action and, where any such property is of a perishable nature or likely to deteriorate or for any other reason ought to be sold, the court may order the sale thereof in such manner and upon such terms as to the court may seem just.

#### 35.03 Specific Fund

Where the right of any party to a specific fund is in dispute, the court may order the fund to be paid into court or otherwise secured on such terms, if any, as to the court may seem just.

#### 35.04 Recovery of Personal Property Subject to Lien

Where any party from whom the recovery of personal property is claimed does not dispute the title of the party making the claim, but seeks to retain the property as security for monies alleged to be owing to him, by virtue of a lien or otherwise, the court may order the party claiming recovery of the property to pay into court, or otherwise secure the monies alleged to be owing and such further sum, if any, for interest and costs as the court may direct. Upon compliance with the order, the property in question shall be delivered to the party claiming recovery thereof and the monies in court or the security as furnished shall abide the event of the action.

#### Rule 369

369. Where there is a dispute arising upon a contract or an alleged contract affecting the title to any property, the court may make an order for the preservation or interim custody of the property, or may order that the amount in dispute be brought into court or otherwise secured, or may order the sale of the property and the payment of the proceeds into court.

#### Rule 372

372.—(1) The court may, upon the application of any party and upon such terms as seem just, make any order for the detention or preservation of property, being the subject of the action, or for the inspection of any property, the inspection of which is necessary for the proper determination of the question in dispute, and for all or any of the purposes aforesaid may authorize any person or persons to enter upon or into any land or building in the possession of a party and may authorize any samples to be taken, or any observation to be made or experiment to be tried, that may seem necessary or expedient for the purpose of obtaining full information or evidence.

#### Rule 371

371. Where a plaintiff seeks to recover specific property other than land, and the defendant does not dispute the title of the plaintiff, but claims to retain the property by virtue of a lien or otherwise as security for money, the court may order that the plaintiff pay into court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum, if any, for interest and costs as the court directs, and that, upon such payment into court being made, the property claimed be given up to him.

#### \* Rule 370

370. The court may, at any time, order the sale, in such manner and on such terms as seem just, of any goods, wares or merchandise that may be of a perishable nature or likely to be injured from keeping, or which for any other reason it may be desirable to have sold at once.

## NOTES

## RULE 36 MEDICAL EXAMINATION OF PARTIES

## 36.01 Definition

For the purpose of this rule, *legally qualified medical practitioner* includes a person licensed to practise dentistry under *The Health Disciplines Act, 1974*.

## 36.02 Who May be Examined

(1) Where the physical or mental condition of any party to an action is in issue, the court may order him to submit to a physical or mental examination, or both.

(2) Where the initial allegation concerning the physical or mental condition of a party to an action originates in the pleading of an adverse party, an order under paragraph (1) may only be made where the court is satisfied that there is good reason to believe that there is real substance to the allegation and that the allegation is relevant to a material issue in the action.

## 36.03 Who May Examine

A physical or mental examination of a party ordered by the court under this rule shall be conducted by one or more legally qualified medical practitioners appointed by the court for that purpose.

## 36.04 Order for Examination

(1) An order for the physical or mental examination of a party shall only be made upon the motion of an adverse party and upon notice to all other parties to the action.

(2) The order shall specify the time, place and scope of the examination, and shall name the medical practitioner or practitioners by whom it is to be made.

(3) The expense of the examination shall be paid by the party obtaining the order but, unless otherwise ordered, such expense and the costs of the motion shall be costs to him in the cause.

(4) The court may order a second examination or further examinations on such terms as to costs or otherwise as may seem just.

## Section 78

78.—(1) In any action or proceeding for the recovery of damages or other compensation for or in respect of bodily injury sustained by any person, the court which, or the judge, or the person who by consent of parties, or otherwise, has power to fix the amount of the damages or compensation, may order that the person in respect of whose injury damages or compensation are sought submit himself to a physical examination by a legally qualified medical practitioner or by more than one legally qualified medical practitioners, but no medical practitioner who is a witness on either side shall be appointed to make the examination. R.S.O. 1960, c. 197, s. 75(1).

(2) Any legally qualified medical practitioner may in connection with an examination under subsection 1 ask the person being examined any questions that may be relevant to the purpose of the examination.

(3) Any answer given or statement made by a person being examined during an examination under subsection 1 that is relevant to the purpose of the examination is admissible in evidence.

(4) No person, other than the person being examined and the one or more medical practitioners making the examination, shall be present during the examination except with the consent of the parties or as may be ordered by the court, judge or other person who ordered the examination. 1966, c. 73, s. 2.

(5) The court, judge or other person may order a second examination or further examinations upon such terms as to costs as are considered proper.

(6) Every such medical practitioner shall be selected by the court, judge or person making the order, and may afterwards be a witness on the trial unless the court, judge or person before whom the action or proceeding is tried otherwise directs.

(7) In this section, "legally qualified medical practitioner" includes a person licensed to practise dentistry under *The Dentistry Act*. R.S.O. 1960, c. 197, s. 75(2-4).

## NOTES

### 36.05 Scope of Examination

(1) In conducting an examination pursuant to an order under this rule, the examining medical practitioner may ask the party being examined any questions relevant to the purpose of the examination, and he shall answer all such questions.

(2) Where expressly authorized to do so by an order made under this rule, the examining medical practitioner may,

- (a) examine hospital records and X-rays previously made or taken in respect of the party being examined;
- (b) have samples taken of blood and other body fluids and cause analyses thereof to be made; and
- (c) cause any other test recognized by medical science to be made including, without restricting the generality of the foregoing, X-rays, electrocardiographs, electroencephalographs and psychological tests; provided, however, that no party shall be required to submit to any test which is unduly painful or potentially dangerous.

(3) Unless otherwise ordered, the party to be examined shall deliver to the party obtaining the order, at least 2 days before the day appointed for the examination, a copy of any report made by any medical practitioner who has treated the party to be examined in respect of the mental or physical condition in issue, and the party obtaining the order shall make a copy of every such report available to the medical practitioner appointed to make the examination, before the examination begins.

### Section 78

78.—(1) In any action or proceeding for the recovery of damages or other compensation for or in respect of bodily injury sustained by any person, the court which, or the judge, or the person who by consent of parties, or otherwise, has power to fix the amount of the damages or compensation, may order that the person in respect of whose injury damages or compensation are sought submit himself to a physical examination by a legally qualified medical practitioner or by more than one legally qualified medical practitioners, but no medical practitioner who is a witness on either side shall be appointed to make the examination. R.B.O. 1960, c. 197, s. 75(1).

(2) Any legally qualified medical practitioner may in connection with an examination under subsection 1 ask the person being examined any questions that may be relevant to the purpose of the examination.

(3) Any answer given or statement made by a person being examined during an examination under subsection 1 that is relevant to the purpose of the examination is admissible in evidence.

(4) No person, other than the person being examined and the one or more medical practitioners making the examination, shall be present during the examination except with the consent of the parties or as may be ordered by the court, judge or other person who ordered the examination. 1966, c. 73, s. 2.

(5) The court, judge or other person may order a second examination or further examinations upon such terms as to costs as are considered proper.

(6) Every such medical practitioner shall be selected by the court, judge or person making the order, and may afterwards be a witness on the trial unless the court, judge or person before whom the action or proceeding is tried otherwise directs.

(7) In this section, "legally qualified medical practitioner" includes a person licensed to practise dentistry under The Dentistry Act. R.S.O. 1960, c. 197, s. 75(2-4).

NOTES

**36.06 Who May Attend on Examination**

No person other than the person being examined, the examining medical practitioner, his nurse or assistant and a medical practitioner nominated by the person being examined, if any, shall be present at the examination of a party made pursuant to an order under this rule, unless the court otherwise orders.

**36.07 Medical Reports**

After conducting an examination pursuant to an order under this rule, the examining medical practitioner shall prepare a written report setting out his observations, including the results of any tests made and his conclusions therefrom as well as his diagnosis and prognosis, and shall forthwith deliver the report to the party obtaining the order. Upon receipt thereof, a copy of the report shall be served by the party obtaining the order on every other party to the action.

**36.08 Penalty for Failure to Comply**

Where a party fails to comply with this rule or with any order made pursuant thereto, he shall be liable, if a plaintiff, to have his action dismissed or, if a defendant, to have his Statement of Defence struck out.

**36.09 Examination by Consent**

The provisions of this rule shall apply to any physical or mental examination conducted by the consent in writing of the parties, except to the extent that they have been waived by any such consent.

**Section 78**

78.—(1) In any action or proceeding for the recovery of damages or other compensation for or in respect of bodily injury sustained by any person, the court which, or the judge, or the person who by consent of parties, or otherwise, has power to fix the amount of the damages or compensation, may order that the person in respect of whose injury damages or compensation are sought submit himself to a physical examination by a legally qualified medical practitioner or by more than one legally qualified medical practitioners, but no medical practitioner who is a witness on either side shall be appointed to make the examination. R.S.O. 1960, c. I97, s. 78(1).

(2) Any legally qualified medical practitioner may in connection with an examination under subsection 1 ask the person being examined any questions that may be relevant to the purpose of the examination.

(3) Any answer given or statement made by a person being examined during an examination under subsection 1 that is relevant to the purpose of the examination is admissible in evidence.

(4) No person, other than the person being examined and the one or more medical practitioners making the examination, shall be present during the examination except with the consent of the parties or as may be ordered by the court, judge or other person who ordered the examination. 1966, c. 73, s. 2.

(5) The court, judge or other person may order a second examination or further examinations upon such terms as to costs as are considered proper.

(6) Every such medical practitioner shall be selected by the court, judge or person making the order, and may afterwards be a witness on the trial unless the court, judge or person before whom the action or proceeding is tried otherwise directs.

(7) In this section, "legally qualified medical practitioner" includes a person licensed to practise dentistry under The Dentistry Act. R.S.O. 1960, c. I97, s. 75(2-4).

**RULE 37 JURISDICTION AND PROCEDURE ON MOTIONS****37.01 Notice of Motion**

A motion shall be made by a Notice of Motion (Form 37A).

**37.02 Jurisdiction to Hear a Motion****(1) In General**

A judge of the court in which a proceeding is pending has the jurisdiction to hear any motion in the proceeding and, where the proceeding is pending in the Supreme Court, a master, a local judge or a local master may hear a motion in the proceeding, if within his jurisdiction as defined by this rule.

**Rule 215**

215. An application in an action or proceeding shall be made by motion, and, unless the nature of the application or the circumstances of the case render it impracticable, notice of the motion shall be given to all parties affected by the order sought (Form 39). (Amended, O. Reg. 530/78, s. 8.)

37.02(2)  
(c)

Rule 210  
Rule 769

## NOTES

### (2) *Jurisdiction of a Master*

- (a) A master has jurisdiction to hear any motion in a proceeding in the Supreme Court for summary judgment or for judgment on consent, unless one of the parties thereto is under disability, and any motion relating to the conduct of the proceeding, except a motion,
  - (i) where the power to grant the relief sought is, by any statute or by these rules, conferred upon a judge;
  - (ii) relating to the liberty of a subject; or
  - (iii) by way of, or in the nature of an appeal.
- (b) For the purposes of clause (a), *the conduct of the proceeding* means any step in the proceeding, including a motion for interim relief, pending the trial or hearing thereof, and also includes any step in the proceeding after the trial or hearing thereof relating the enforcement of a judgment granted in any such proceeding.
- (c) In addition to his jurisdiction in respect of a motion in a proceeding in the Supreme Court, a master may hear a motion to change the place of trial in a county court action, or to order the consolidation or trial together of proceedings pending in two or more county courts.

### Rule 210

210. The Master, sitting otherwise than in open court, is empowered and required to dispose of all motions properly made under rule 209 (1), except with respect to the following matters, whether ex parte, on consent or otherwise:

1. Matters relating to criminal proceedings or the liberty of the subject.
2. Appeals and applications in the nature of appeals.
3. Extending the time for appealing to an appellate court.
4. Applications for arrest.
5. Proceedings as to mentally incompetent persons.
6. Originating motions, other than those for administration, partition or interpleader.
7. Applications as to the custody, maintenance or guardianship of infants, or the sale, lease, mortgage or dealing with infants' estates or settled estates but this exception shall not include applications under item (p) of rule 209 (1) or other interlocutory applications for the interim custody or interim maintenance of infants.
8. Opposed applications for judgment for partition or administration.
9. The payment of money out of court, or dispensing with the payment of money into court, in administration and partition matters.
10. Allowing taxed costs in lieu of commission under rule 660.
11. Striking out a jury notice except for irregularity or on consent of all parties to the action.
12. Any matter which is expressly required to be done by a judge.
13. The removal of causes from inferior courts.
14. The making of orders for reference under The Arbitrations Act.
15. Staying proceedings after verdict or judgment at a trial.
16. Application for restraining orders under The Family Law Reform Act, 1978. (Amended, O. Regs. 115/72, s. 4; 628/76, s. 1; 216/78, s. 6; 520/78, s. 5.)

### Rule 769

769. In all actions brought in a county court, the judge of the county court where the proceedings were commenced, or the Master (subject to appeal in either case as if the case were in the High Court of Justice) may change the place of trial, and in the event of an order being obtained for that purpose, the clerk of the county court in which the action was commenced shall forthwith transmit all papers in the action to the clerk of the county court to which the place of trial is changed, and all subsequent proceedings shall be entitled in such last-mentioned court and carried on in such last-mentioned court as if the proceedings had originally been commenced in such last-mentioned court.

NOTES(3)  
(4)Rule 211  
Rule 211

## RULE 37.02

*\* (3) Jurisdiction of a Local Judge*

Except in the Judicial District of York, a local judge has the same jurisdiction as a judge of the Supreme Court to hear any motion in a proceeding in the Supreme Court where the proceeding was commenced in his county or where the solicitor of record for any party to the proceeding practises law in his county or where any party to the proceeding resides in his county or where all the parties to the proceeding consent, except a motion by way of, or in the nature of, an appeal or a motion to vary the judgment of a judge of the Supreme Court.

*(4) Jurisdiction of a Local Master*

A local master has the same power and authority to hear any motion in a proceeding in the Supreme Court as a master where the proceeding was commenced in his county or where the solicitor of record for any party to the proceeding practises law in his county or where any party to the proceeding resides in his county or where all the parties to the proceeding consent.

## Rule 211

211. A local judge or a local master has in all causes and matters in his county and in interpleader proceedings where the goods in respect of which interpleader is sought are situate in his county concurrent jurisdiction with, and the same power and authority, as the Master at Toronto.

\*

## Rule 213

213.—(1) A local judge may in cases of emergency grant an ex parte injunction in any action brought in his county upon proof to his satisfaction that the delay required for an application to a judge is likely to involve a failure of justice, but such injunction shall not be for a longer period than eight days.

(2) If all parties interested consent, the local judge may hear any motion to continue, vary or dissolve the injunction.

NOTES

**JURISDICTION AND PROCEDURE  
ON MOTIONS**

**RULE 37****37.03 Where a Motion in the Supreme Court May be Brought****(1) Where Made Without Notice**

A motion made without notice in a proceeding in the Supreme Court may be brought in the county in which the proceeding was commenced or where any party to the proceeding resides or where the solicitor of record for any party to the proceeding practises law.

**(2) Where Made on Notice**

Unless the parties to the motion otherwise agree, a motion made on notice in a proceeding in the Supreme Court shall be brought,

(a) in the county where the solicitor of record for any respondent to the motion practises law, or, where any respondent is not represented by a solicitor in the county where the respondent resides; or

(b) where there is no respondent to the motion residing in Ontario or represented by a solicitor of record in Ontario, in the county where the proceeding was commenced or where the solicitor of record for any party to the proceeding practises law.

**(3) Where Brought in the Judicial District of York**

Where a motion in a proceeding in the Supreme Court is properly brought in the Judicial District of York, it shall be made to a master, if within his jurisdiction; and, if not, it shall be made to a judge of the Supreme Court.

**(4) Where Brought Outside the Judicial District of York**

Where a motion in a proceeding in the Supreme Court is properly brought in a county other than the Judicial District of York, it shall be made to a local master of that county, if within his jurisdiction; and, if not, it may be made to a local judge of that county or to a judge of the Supreme Court sitting in that county.

**Rule 239****Rule 239**

239. All motions may be heard and determined by the Judge at sittings held at Ottawa and London where,

- (a) the motion is ex parte;
  - (b) all parties consent;
  - (c) the matter in controversy arose in the county in which such sittings are held;
  - (d) Ottawa is named as the place of hearing and all respondents reside in, or their solicitors have offices in, any of the following counties, namely, Carleton, Lanark, Leeds and Grenville, Prescott and Russell, Stormont, Dundas and Glengarry, or Renfrew, and, except where all the respondents reside or their solicitors have offices in Ottawa, notice of such motion is served upon such respondents at least four clear days before the return date thereof;
  - (e) London is named as the place of hearing and all respondents reside in, or their solicitors have offices in, any of the following counties, namely, Middlesex, Lambton, Elgin, Oxford, Perth, Norfolk, Kent, Huron or Essex, and, except where all the respondents reside or their solicitors have offices in London, notice of such motion is served upon such respondents at least four clear days before the return date thereof; or
  - (f) a Judge directs any proceedings to be heard at such sittings.
- [Amended, O. Reg. 520/78, ss. 13, 14.]

37.04  
37.05 (1)  
(2)  
(3)  
(4)

Rule 220  
Rule 215  
Rule 218  
Rule 216  
Rule 217

\* 37.04 Content of Notice

Every Notice of Motion shall state the relief sought, and shall specify with particularity any irregularity complained of or any objection to be relied on, as well as the grounds intended to be argued, including reference to any statutory provision or rule sought to be invoked.

37.05 Service of Notice

(1) *Where Required*

The Notice of Motion shall be served on any person, including a party to the proceeding, affected by the order sought, unless otherwise ordered.

(2) *Where Not Required*

(a) Where the nature of the motion or the circumstances of the case render service of the Notice of Motion impractical or unnecessary, or where the delay necessary to effect such service might entail serious consequences, the court may make an order without notice.

(b) Where a case of extreme urgency exists, a motion may be made before the commencement of a proceeding upon the undertaking of the applicant to commence the proceeding forthwith.

(3) *Where Notice Ought to be Served*

Where it appears to the court that the Notice of Motion ought to be served on a person who has not been served, and who may be affected by the order sought, the court may direct that the Notice of Motion, or any order made on the motion, be served on that person in such manner as may seem just.

(4) *Time for Service*

A Notice of Motion shall be served at least 3 days before the date upon which it is returnable.

Rule 220

220. Every notice of motion by way of appeal shall specify the grounds intended to be argued.

Rule 215

215. An application in an action or proceeding shall be made by motion, and, unless the nature of the application or the circumstances of the case render it impracticable, notice of the motion shall be given to all parties affected by the order sought (Form 39). [Amended, O. Reg. 639/76, s. 8.]

Rule 218

218. If satisfied that the delay necessary to give notice of motion might entail serious mischief, the court may make an interim order except.

Rule 216

216. If on the hearing of a motion it appears that a person to whom notice has not been given ought to have had notice, the court may either dismiss the motion or adjourn the hearing thereof in order that notice may be given.

Rule 217

217. Except where otherwise expressly provided or unless leave is given, there shall be at least two days between the service of a notice of motion in an action and the day for hearing and at least seven days between the service of an originating notice and the day for hearing. [Amended, O. Reg. 106/76, s. 21.]

\*

Rule 221

221. A notice of motion to set aside a proceeding for irregularity shall specify the irregularity complained of and the objections intended to be insisted on.

**NOTES**

37.06 (1)  
37.07 (1)

Rule 237 (2)  
Rule 219

**JURISDICTION AND PROCEDURE  
ON MOTIONS**

**RULE 37**

**Rule 237**

**37.06 Filing of Notice**

(1) Where the Notice of Motion has been served, or where service thereof is required, it shall be filed with proof of service at least the day before the date upon which it is returnable.

(2) Where service of the Notice of Motion is not required, it shall be filed on or before the hearing thereof.

**37.07 Rescinding Orders Made Without Notice**

(1) Any person affected by an order made without notice to him or any person who has failed to appear on a motion through accident, mistake or insufficient notice, may apply to rescind or vary the order by Notice of Motion served within 10 days and returnable within 15 days after the order came to his attention.

(2) The motion may be made to the judge or officer who made the order, or to any other judge or officer having jurisdiction.

\* **37.08 Where Motion Brought before Wrong Court, Judge or Officer**

A motion improperly brought before any court, judge or officer may be adjourned to the proper court, judge or officer.

(2) Motions, except ex parte motions, shall be set down in the Registrar's office, at least one day before the return date.

**Rule 219**

219. A party affected by an ex parte order, or any party who has failed to appear on an application through accident or mistake, or insufficient notice of the application may move to rescind or vary the order by notice served within seven days and returnable before the judge or officer who made the order, or any judge or officer having jurisdiction, within ten days after the order came to his notice. [Amended, O. Reg. 106/75, s. 22.]

\*

**Rule 225**

NOTE: Sub-rule (1) was revoked by O. Reg. 520/78, s. 9, and sub-rules (2) and (3) renumbered as sub-rules (1) and (2) by O. Reg. 520/78, s. 9.

225.—(1) Any motion or matter improperly brought before the Master or a local judge may be adjourned by him before the court. [Amended, O. Reg. 520/78, s. 10.]

(2) Any motion improperly made before an appellate court may be adjourned to the proper court and any motion that should have been made before an appellate court made before a judge of the High Court may be adjourned to the proper appellate court. [Amended, O. Reg. 115/72, s. 5.]

NOTES**37.09 Where Public may be Excluded**

(1) A motion may be heard in the absence of the public where,

- (a) the order sought is unopposed or on consent;
- (b) because of urgency, it is impractical to have the motion heard in public; or
- (c) the proceeding relates to the estate or property of a party under disability.

**JURISDICTION AND PROCEDURE                    RULE 37  
ON MOTIONS**

(2) The hearing of all other motions shall be open to the public unless, in any particular motion, the presiding judge or officer is satisfied that the possibility of serious prejudice or injustice to the parties or any of them outweighs the desirability of holding the hearing in public and endorses upon the Notice of Motion his leave for a hearing in the absence of the public.

(3) Where a motion is heard in the absence of the public, there shall be no publication of any matter connected with the motion or given in evidence at the hearing except by leave of the presiding judge or officer.

**Rule 207**

207. All motions shall be heard in open court except as provided in the rules. [Amended, O. Reg. 520/78, ss. 2, 3.]

**Rule 209**

209. The following motions need not be heard in open court unless the judge hearing the motions so directs:

- (1) (a) For the sale, lease or mortgaging of the estates of infants;
- (b) As to the custody, guardianship, maintenance, and advancement of infants;
- (c) For administration or partition without action;
- (d) Relating to the conduct of actions or matters;
- (e) For the payment of money into court;
- (f) Applications for leave to issue and to vacate certificates of lis pendens;
- (g) Appeals from an interlocutory judgment or order of the Master or local judge;
- (h) Motions for judgment under rule 58;
- (i) An order upon consent dismissing an action either with or without costs;
- (j) Applications under The Mental Incompetency Act;
- (k) Applications for and on the return of a writ of habeas corpus;
- (l) Motions for interpleader;
- (m) Motions to wind up companies under the Federal or Ontario acts;
- (n) Motions for payment of money out of court;
- (o) Motions under rules 546, 567 and 775;
- (p) Applications for interim corollary relief under section 18 of the Divorce Act (Canada);
- (q) Motions for interim relief under The Family Law Reform Act, 1978;
- (r) Originating motions under paragraphs 3, 4, 6 and 10 of rule 607;
- (s) Motions under any statute that authorizes an application to a judge;
- (t) Motions before a Justice of Appeal.
- (2) Motions which are made ex parte or on consent or which are shown, to the satisfaction of the judge, to be unopposed.
- (3) Other motions with respect to which the judge is satisfied that the possibility of prejudice or injustice to the parties or any of them outweighs the desirability of holding the hearing in open court. [Amended, O. Regs. 115/72, s. 3; 367/73, s. 21; 210/78, s. 7; 520/78, s. 4.]

NOTES

37.11

(a)

(b)

Rule 208

Rule 222

Rule 235

Rule 208

208. Any power conferred upon the court may be exercised upon such terms as to costs and otherwise as are deemed just.

Rule 222

222. The court may direct any application to be turned into a motion for judgment. [New. O. Reg. 107/74, s. 3.]

Rule 235

235. Upon any motion the court has power to direct the trial of an issue upon oral evidence and may enlarge the motion before the judge at the trial of the issue.

\*

Rule 223

223. Where upon an application for an interim injunction or upon any other motion it appears expedient to direct an early trial, the court may make such order as is deemed necessary to secure an early hearing, either at the place named for trial or such other place as is convenient.

## 37.10 Hearing by Way of Conference Telephone

(1) Notwithstanding the provisions of Rule 37.09, where all counsel on a contested motion and the judge or officer before whom the motion is returnable consent, the motion may be heard on a conference telephone call.

(2) Where a contested motion is to be heard in this manner, counsel for the party bringing the motion shall file with the court and furnish to every other counsel a record containing a copy of all documents relevant to the motion.

## 37.11 Disposition of Motion

On the hearing of a motion, the presiding judge or officer may allow, dismiss or adjourn the motion either in whole or in part and with or without terms; or, where the motion is heard by a judge, or a local judge, he may direct,

(a) in a proper case, that the motion be converted into a motion for judgment;

(b) the trial of an issue with such directions or upon such terms as may seem just; or

\*(c) where the proceeding is an action, that it be placed forthwith, or within a specified time, on a list of cases requiring speedy trial or, where the proceeding is an application, that it be heard at such time and place and upon such terms as may seem just.

NOTES**37.12 Motions in a Complicated Action or Series of Actions**

Where an action in the Supreme Court involves complicated issues or where there are two or more actions in the Supreme Court arising out of the same transaction, occurrence, or series of transactions or occurrences, involving similar issues, the Chief Justice of the High Court may direct that all motions in any such action or actions be heard by a particular judge designated by him.

**37.13 Prohibiting Motions Without Leave**

Where the presiding judge or officer, on the hearing of any motion, is satisfied that any party is attempting to delay a proceeding or add to the costs thereof, or otherwise abuse the process of the court by multiplicity of frivolous or vexatious motions, he may prohibit any such party from bringing any further motions in the proceeding without leave.

## NOTES

**RULE 38 JURISDICTION AND PROCEDURE  
ON APPLICATIONS**

**38.01 Application of Rule**

This rule shall apply to all proceedings commenced by a Notice of Application pursuant to Rule 16.04.

**38.02 Jurisdiction to Hear an Application**

(1) *In General*

Unless otherwise provided by any statute, a judge of the court in which an application is commenced has the jurisdiction to hear the application and, where an application in the Supreme Court is made returnable outside the Judicial District of York, the application may be heard by a local judge, if within his jurisdiction as defined by this rule.

*K* (2) *Jurisdiction of Local Judge*

Except where an application is for judicial review or is required by any statute to be made to a judge of the Supreme Court, a local judge, outside the Judicial District of York, has jurisdiction to hear any application in the Supreme Court commenced in his county; subject to the right of any respondent to the application, within 5 days of the service upon him of the Notice of Application, to obtain from the registrar and serve upon the applicant an Order of Transfer (Form 38A) transferring the application to a judge of the Supreme Court. Where the applicant is served with an Order of Transfer as herein provided, he may only proceed with the application by serving and filing a notice making the application returnable before a judge of the Supreme Court at a place and date for hearing to be obtained as provided in Rule 38.03.

**Rule 212**

212.—(1) A local judge, in actions brought in his county, possesses the like powers as a judge with regard to,

- (a) motions for judgment in undefended actions other than matrimonial causes;
- (b) motions to appoint receivers after judgment by way of equitable execution;
- (c) applications for leave to serve short notice of a motion to be made before a judge; and
- (d) any other motion or application where the solicitors for all parties reside in his county or agree that the same shall be heard before him, except

- (i) applications for taxed or increased costs under Rule 660;
- (ii) motions for injunction, except as provided in Rule 213;
- (iii) motions to strike out a jury notice other than for irregularity or on consent. [Amended, O. Regs. 628/76, s. 2; 620/78, ss. 6, 6a.]

(e) [Revoked, O. Reg. 628/76, s. 2.]

(f) [Revoked, O. Reg. 628/76, s. 2.]

(2) Where an infant or mentally incompetent person is concerned, the powers conferred by sub-rule (1) shall not be exercised without the consent of the Official Guardian or of the committee or guardian of or the person authorized to act on behalf of the mentally incompetent person. [Amended, O. Reg. 284/71, s. 3(a).]

(3) A local judge possesses the like powers as a judge of the High Court with regard to claims for relief under the Divorce Act (Canada) and claims for any other relief joined in a petition for divorce, if he has been appointed a local judge of the High Court of Justice for Ontario by the Governor General and whether or not the action is brought in his county. [New, O. Reg. 284/71, s. 3(b); amended, O. Reg. 216/78, s. 9.]

#

**Rule 214**

214. Motions for partition or administration may be made before a judge or the local judge of the county where the land (or if more than one parcel, any parcel) is situate or the testator or intestate died. [Amended, O. Reg. 620/78, s. 7.]

NOTES**38.03 Place and Date of Hearing in the Supreme Court**

(1) An application to a local judge shall be made returnable in the county in which the application is commenced. An application to a judge of the Supreme Court may be made returnable in any county.

(2) Where an application in the Supreme Court is made returnable in the county in which it is commenced, a date for hearing shall be obtained from the registrar in that county.

(3) Where an application in the Supreme Court is made returnable in a county other than the county in which it is commenced, or where an Order of Transfer has been served upon the applicant, as provided in Rule 38.02, a place and date for the hearing before a judge of the Supreme Court shall be obtained through the registrar in the county where the application was commenced.

(4) Notwithstanding paragraphs (2) and (3), where the application is urgent and a satisfactory date cannot be obtained from the registrar, the application may be made returnable on any date that a local judge or a judge of the Supreme Court, as the case may be, is sitting for the hearing of applications in the county where the applicant proposes the application be heard.

**38.04 Issuing of Notice**

Every Notice of Application shall be issued as provided by Rule 16.06 before it is served.

**38.05 Content of Notice**

Every Notice of Application shall state the relief sought and shall specify with particularity the nature of any claim made or any question sought to be determined, as well as the grounds intended to be argued, including reference to any statutory provision or rule sought to be invoked.

**Rule 239**

239. All motions may be heard and determined by the judge at sittings held at Ottawa and London where,

- (a) the motion is *ex parte*;
  - (b) all parties consent;
  - (c) the matter in controversy arose in the county in which such sittings are held;
  - (d) Ottawa is named as the place of hearing and all respondents reside in, or their solicitors have offices in, any of the following counties, namely, Carleton, Lanark, Leeds and Grenville, Prescott and Russell, Stormont, Dundas and Glengarry, or Renfrew, and, except where all the respondents reside or their solicitors have offices in Ottawa, notice of such motion is served upon such respondents at least four clear days before the return date thereof;
  - (e) London is named as the place of hearing and all respondents reside in, or their solicitors have offices in, any of the following counties, namely, Middlesex, Lambton, Elgin, Oxford, Perth, Norfolk, Kent, Huron or Essex, and, except where all the respondents reside or their solicitors have offices in London, notice of such motion is served upon such respondents at least four clear days before the return date thereof; or
  - (f) a judge directs any proceedings to be heard at such sittings.
- [Amended, O. Reg. 520/78, ss. 13, 14.]

**Rule 220**

220. Every notice of motion by way of appeal shall specify the grounds intended to be argued.

NOTES**38.06 Service of Notice****(1) Where Required**

The Notice of Application shall be served on all parties to the proceeding and, where there is doubt as to who should be served, the applicant may apply to a judge, without notice, for an order for directions.

**Rule 80**

80. A residuary legatee or next of kin may have a judgment for the administration of the personal estate of a deceased person without serving the other residuary legatees or next of kin.

**Rule 81**

81. A legatee interested in a legacy charged upon real estate or a person interested in the proceeds of real estate directed to be sold may have a judgment for the administration of the estate of a deceased person without serving any other legatee or person interested in the proceeds.

**Rule 82**

82. A residuary devisee or heir may have the like judgment without serving any other residuary devisee or heir.

**Rule 83**

83. One cestui que trust under an instrument may have a judgment for the execution of the trusts of the instrument without serving the other cestui que trust.

**Rule 84**

84. In actions for the protection of property and in cases in the nature of waste, one person may sue on behalf of himself and of all persons having the same interest.

**Rule 85**

85. An executor, administrator or trustee may obtain a judgment against any one legatee, next of kin or cestui que trust for the administration of the estate or the execution of the trusts.

**Rule 86**

86. The court may require any other person to be made a party to an action to which rules 80 to 85 apply, and may give the conduct of the action to such party as it deems proper, and may make such order as it deems just for placing the plaintiff on the record on the same footing in regard to costs as other persons having a common interest with him in the matter in question.

**Rule 87**

87. Where a reference is directed, the persons who, but for rules 80 to 85, would have been necessary parties shall be served with an office copy of the judgment (unless the court or Master dispenses with such service) endorsed with a notice according to Form 43, and after such service they are bound by the proceedings in the same manner as if they had been originally made parties; and, upon notice to the plaintiff, they may at their own risk as to costs require notice to be given them to enable them to attend the proceedings under the judgment, and any person so served may apply to the court to add to, vary or set aside the judgment within ten days from the date of such service.

(2)  
(3)  
(4)Rule 218  
Rules 216; 631  
Rule 217NOTES

## RULE 38.06 CONTINUED

**(2) Where Not Required**

Where the nature of the application or the circumstances of the case render service of the Notice of Application impractical or unnecessary, or where the delay necessary to effect such service might entail serious consequences, the judge may make an order without notice.

**(3) Where Notice Ought to be Served**

When it appears to the judge that the Notice of Application ought to be served on a person who has not been served, and who may be affected by the order sought, the judge may direct that the Notice of Application or any order made on the application be served on the person in such manner as may seem just.

**(4) Time for Service**

A Notice of Application shall be served within the time prescribed by Rule 16.07.

## Rule 218

218. If satisfied that the delay necessary to give notice of motion might entail serious mischief, the court may make an interim order ex parte.

## Rule 216

216. If on the hearing of a motion it appears that a person to whom notice has not been given ought to have had notice, the court may either dismiss the motion or adjourn the hearing thereof in order that notice may be given.

## Rule 631

631. The court may require notice to be given to any person claiming any right or interest in the subject-matter of the application.

## Rule 217

217. Except where otherwise expressly provided or unless leave is given, there shall be at least two days between the service of a notice of motion in an action and the day for hearing and at least seven days between the service of an originating notice and the day for hearing. [Amended, O. Reg. 106/75, s. 21.]

*Shoobred v. Reliable Transport Ltd.*, [1869] O.W.N. 856.

Saturday is a juridical day and therefore is to be counted in computing the two days notice stipulated for an interlocutory motion.

38.07  
38.08

## NOTES

### **38.07 Record**

Where an application on notice is made returnable before a judge of the Supreme Court, the applicant shall, on or before the day prior to the hearing of the application, deposit with the registrar a record for the use of the court consisting of,

- (a) an index;
- (b) a copy of the Notice of Application; and
- (c) a copy of all affidavits or other material filed for use on the hearing of the application.

### **38.08 Rescinding Orders Made Without Notice**

(1) Any person affected by an order made without notice to him, or any person who has failed to appear on an application through accident, mistake or insufficient notice, may apply to rescind or vary the order by Notice of Motion served within 10 days and returnable within 15 days after the order came to his attention.

(2) The motion may be made to the judge who made the order or to any other judge having jurisdiction.

Rule 238  
Rule 219

### **Rule 238**

238.—(1) In all cases, except as hereinafter provided, where an appeal is taken to a judge of the Supreme Court and in all cases where a motion is made under sub-rules (1), (2), (7), (9) or (10) of rule 607, rules 611, 612 or 629, the appellant or the applicant, as the case may be, shall on or before the day prior to the hearing of the appeal or motion, transmit to the Registrar sufficient copies for the use of the court and furnish to each respondent a record containing copies of documents in the following order:

- (A) 1. An Index.
- 2. The notice of appeal or originating notice.
- 3. In the case of an appeal, the judgment or order appealed from and the reasons for judgment, if any.
- 4. Such of the material as is necessary for the due hearing of the appeal or motion.
- (B) A concise statement, without argument, of the facts and law relied on by the appellant or applicant.
- (2) In all such cases each respondent shall on or before the day prior to the appeal or motion coming on for hearing,
  - (a) furnish to the appellant or applicant two copies of any new material filed by him for use on the appeal or motion; and
  - (b) transmit to the Registrar sufficient copies for the use of the court and furnish to each of the other parties one copy of
    - (i) any new material filed by him for use on the appeal or motion and
    - (ii) a concise statement, without argument, of the facts and law relied on by him.

(3) This rule does not apply to appeals under sub-rule (2) of rule 499 or rule 514 nor to appeals from a taxing officer.

(4) A Judge may dispense with compliance with this rule either in whole or in part. [Amended, O. Reg. 115/72, s. 6.]

### **Rule 219**

219. A party affected by an ex parte order, or any party who has failed to appear on an application through accident or mistake, or insufficient notice of the application may move to rescind or vary the order by notice served within seven days and returnable before the judge or officer who made the order, or any judge or officer having jurisdiction, within ten days after the order came to his notice. [Amended, O. Reg. 106/75, s. 22.]

## NOTES

## 38.09 Where Application Brought in Wrong Court

(1) Any application improperly brought before any court, judge or officer may be transferred or adjourned to the proper court, judge or officer.

(2) Where any application is transferred to another court, the proceeding shall thereafter be styled in the court to which it is transferred and shall be proceeded with as if it had been commenced in that court.

## 38.10 Where Public may be Excluded

The provisions of Rule 37.09 shall apply, with any necessary modification, to any proceeding commenced by a Notice of Application.

## Rules 207; 209

## Rule 207

207. All motions shall be heard in open court except as provided in the rules. [Amended, O. Reg. 520/78, s. 2, s. 3.]

## Rule 209

209. The following motions need not be heard in open court unless the judge hearing the motions so directs:

- (1) (a) For the sale, lease or mortgaging of the estates of infants;
- (b) As to the custody, guardianship, maintenance, and advancement of infants;
- (c) For administration or partition without action;
- (d) Relating to the conduct of actions or matters;
- (e) For the payment of money into court;
- (f) Applications for leave to issue and to vacate certificates of issue pendente;
- (g) Appeals from an interlocutory judgment or order of the Master or local judge;
- (h) Motions for judgment under rule 58;
- (i) An order upon consent disclaiming an action either with or without costs;
- (j) Applications under The Mental Incompetency Act;
- (k) Applications for and on the return of a writ of habeas corpus;
- (l) Motions for interpleader;
- (m) Motions to wind up companies under the Federal or Ontario acts;
- (n) Motions for payment of money out of court;
- (o) Motions under rules 546, 567 and 776;
- (p) Applications for interim corollary relief under section 10 of the Divorce Act (Canada);
- (q) Motions for interim relief under The Family Law Reform Act, 1978;
- (r) Originating motions under paragraphs 3, 4, 6 and 10 of rule 607;
- (s) Motions under any statute that authorizes an application to a judge;
- (t) Motions before a Justice of Appeal.

(2) Motions which are made ex parte or on consent or which are shown, to the satisfaction of the judge, to be unopposed.

(3) Other motions with respect to which the judge is satisfied that the possibility of prejudice or injustice to the parties or any of them outweighs the desirability of holding the hearing in open court. [Amended, O. Reg. 115/72, s. 3; 367/73, s. 21; 216/78, s. 7; 520/78, s. 4.]

## Rule 225

NOTE: Sub-rule (1) was revoked by O. Reg. 520/78, s. 9, and sub-rules (2) and (3) renumbered as sub-rules (1) and (2) by O. Reg. 520/78, s. 9.

225.—(1) Any motion or matter improperly brought before the Master or a local judge may be adjourned by him before the court. [Amended, O. Reg. 520/78, s. 10.]

(2) Any motion improperly made before an appellate court may be adjourned to the proper court and any motion that should have been made before an appellate court made before a judge of the High Court may be adjourned to the proper appellate court. [Amended, O. Reg. 115/72, s. 6.]

## NOTES

### 38.11 Disposition of Application

(1) On the hearing of an application, the presiding judge may,

(a) allow, dismiss or adjourn the application, either in whole or in part and with or without terms; or

(b) where he is satisfied that there is substantial dispute of fact, direct that the whole application proceed to trial or direct the trial of any particular issue or issues and, in either case, give such directions and impose such terms as may seem just.

(2) Subject only to the directions and terms contained in the order directing the trial, the proceeding shall thereafter be treated as an action.

### 38.12 Application to Divisional Court

The provisions of this rule shall apply, with any necessary modification, to an application to the Divisional Court.

### Rule 613

613.—(1) The judge may summarily dispose of the questions arising on an originating notice and give such judgment as the nature of the case requires, or may give such directions as he thinks proper for the trial of any questions arising upon the application.

(2) Any special directions touching the carriage or execution of the judgment or order or the service thereof upon persons not parties may be given as are deemed proper.

### Rule 10

10.—(1) The proceedings authorized by rules 607, 611, 612, 615, 622, 624, 625, 629, 698 and Interpleader, other than interpleader proceedings by a sheriff, as provided under rules 632 and 651, may be commenced by notice of motion called an originating notice.

(2) Garnishment proceedings and Interpleader proceedings by a sheriff shall be deemed to be interlocutory proceedings in the original cause or matter.

(3) An issue directed in garnishment or Interpleader proceedings or any other issue directed to be tried under those rules shall be deemed to be an action, and the judgment upon the trial of an issue shall, for the purposes of appeal, be deemed to be final and not interlocutory.

### Rule 127

127. Where an issue directed to be tried, it shall be filed in the office in which the proceedings are carried on, and thereafter the proceedings in the issue shall be carried on in the same manner as the proceedings in an action. [Amended, O. Reg. 520/78, s. 1.]

NOTES

39

39.01(1)  
 (2)  
 (3)  
 (4)  
 (5)

Rule 269  
 Rules 237(3); 297  
 Rules 237(3)  
 Rule 292  
 Rule 292

**RULE 39 EVIDENCE ON MOTIONS AND APPLICATIONS****39.01 By Affidavit**

\* (1) Evidence upon a motion or application may be given by affidavit unless otherwise provided.

(2) Where a motion or application is made on notice, any affidavit in support of the motion or application shall be served with the Notice of Motion or Notice of Application, as the case may be. All affidavits to be used upon the hearing shall be served and filed with proof of service, not later than 4 p.m. on the day preceding the hearing.

(3) Where a motion or application is made without notice, it shall be sufficient to file any affidavit in support of the motion or application on or before the hearing thereof.

(4) Except in the case of a motion for summary judgment under Rule 22, an affidavit for use upon a motion need not be confined to statements of fact within the knowledge of the deponent, but may contain statements as to his information and belief, provided the source of his information and his belief therein are specified in the affidavit.

(5) An affidavit for use upon an application shall be confined to facts within the personal knowledge of the deponent; provided, however, that the affidavit may contain statements as to the information and belief of the deponent with respect to facts which are not contentious, where the source of his information and his belief therein are specified in the affidavit.

**Rule 269**

269. All witnesses in a matter pending before a master shall be examined viva voce, unless it is otherwise ordered by the master or by the court on special grounds.

**Rule 237**

237.—(1) All papers for use on a motion at Toronto shall be filed in the Registrar's office, and, when, no longer required, all such papers and all papers forwarded for use on the motion shall be transmitted to the office in which the proceedings were commenced.

(2) Motions, except ex parte motions, shall be set down in the Registrar's office, at least one day before the return date.

(3) All papers to be used on the hearing shall be left with the Registrar on the day before that on which the motion is to be heard, and shall be marked with the name of the office where the proceedings were commenced.

(4) All documents sent from local offices to Toronto shall be sent to the Registrar at Toronto, postage or express charges prepaid.

(5) Unless otherwise directed by the Judge, ex parte and unopposed motions shall be heard before contested motions. (Amended, O. Regs. 36/73, s. 28; 520/78, s. 12.)

**Rule 297**

297. Unless otherwise ordered, affidavits upon which a notice of motion is founded shall be served with the notice of motion, and all affidavits shall be served and filed before they are used.

**Rule 292**

292. Affidavits shall be confined to the statement of facts within the knowledge of the deponent, but, on Interlocutory motions, statements as to his belief, with the grounds therefor, may be admitted.

\*  
**Rule 228**

228. Evidence upon a motion may be given by affidavit.

39.02(1)  
(2)

## NOTES

### **39.02 By Examination of a Witness**

#### *(1) Prior to the Hearing*

A person who is not a party to the proceeding may be examined prior to the hearing of a motion or application for the purpose of having a transcript of his evidence available for use upon the hearing thereof.

#### *(2) On the Hearing*

A person may be orally examined or cross-examined on the hearing of a motion or application, but only with leave of the presiding judge or officer.

**Rule 230**  
**Rules 231; 269; 628**

#### **Rule 230**

230. Any party may by subpoena require the attendance of a witness to be examined, before any officer having jurisdiction in the county in which the witness resides, for the purpose of using his evidence upon any motion.

#### **Rule 231**

231. Witnesses may by leave of the court be examined *viva voce* before the court upon any motion.

#### **Rule 269**

269. All witnesses in a matter pending before a master shall be examined *viva voce*, unless it is otherwise ordered by the master or by the court on special grounds.

#### **Rule 628**

628. Witnesses in support of the application may be examined *viva voce* before the judge making the order or before a master.

★  
39.03 Cross-examination on Affidavit

(1) *Made for Use upon a Motion*

- (a) Any party to a motion who has delivered every affidavit upon which he intends to rely, may cross-examine the deponent of any affidavit delivered by or on behalf of the opposite party.
- (b) Where a party has cross-examined under clause (a), he shall not deliver any additional affidavit for use on the hearing of the motion without leave or consent; and such leave may be granted where the court is satisfied that he ought to be permitted to respond by affidavit to any matter raised on the cross-examination.
- (c) Any party who cross-examines the deponent of any affidavit delivered by or on behalf of the opposite party for use upon a motion, shall be liable for the party and party costs of the opposite party in respect of such cross-examination in any event of the cause, unless otherwise ordered by the court.
- (d) Where the party who cross-examines orders a transcript of such cross-examination, he shall serve a copy thereof on the opposite party, free of charge.
- (e) Cross-examination on an affidavit delivered for use upon a motion for summary judgment is governed by Rule 22.03.

(2) *Made for Use upon an Application*

Where a person has made an affidavit for use upon an application, he may be cross-examined thereon, unless otherwise ordered.

(3) *To be Exercised with Reasonable Diligence*

The right to cross-examine under paragraphs (1) and (2) shall be exercised with reasonable diligence, and the court may refuse an adjournment of a motion or application for the purpose of cross-examination where the party seeking the adjournment has failed to do so.

NOTES  
Rule 229

229.—(1) Where a person has made an affidavit of merits or an affidavit to be used upon a motion or at a trial or on a reference, he may be cross-examined thereon before any officer having jurisdiction in the county in which the witness resides, upon the solicitor of the party on whose behalf the affidavit has been filed being served with an appointment two days before the day appointed for the cross-examination.  
 (3) The attendance of such a person may also be required under rules 344 and 345.

NOTES**P R E S E R V A T I O N   O F   R I G H T S****P E N D I N G   L I T I G A T I O N****R U L E   4 0   I N T E R L O C U T O R Y   I N J U N C T I O N   O R  
M A N D A T O R Y   O R D E R****40.01 On Motion to a Judge**

A motion for an interlocutory injunction or mandatory order, or for an extension thereof, shall be made to a judge of the court in which the proceeding is pending, or in which the intended proceeding is to be brought.

**40.02 Where Motion Made Without Notice**

(1) Where the motion is made without notice, an injunction may only be granted for a period not exceeding 10 days.

(2) Where an injunction is granted on a motion made without notice, a motion to extend the injunction may only be made on notice to any party affected by the order unless it can be shown that any such party has been evading service or that, by reason of some other exceptional circumstances, the injunction ought to be extended, in which case the extension shall be confined to a period not exceeding a further 10 days.

**40.03 Undertaking**

On a motion for an interlocutory injunction or mandatory order, the plaintiff or applicant, by his counsel, shall, unless otherwise ordered, undertake to abide by any order as to damages which the court may make should it ultimately appear that the defendant or respondent has sustained any loss by reason of the granting of the order which the plaintiff or applicant ought to pay.

NOTES**41.01 On Motion to a Judge**

A motion for the appointment of a receiver, or receiver and manager, shall be made to a judge of the court in which the proceeding is pending, or in which the intended proceeding is to be brought.

**41.02 Form of Order**

The order appointing a receiver, or receiver and manager shall,

- (a) name the person so appointed or refer the appointment thereof to a master;
- (b) specify the amount and terms of the security, if any, to be furnished by him for the proper performance of his duties or refer the determination thereof to a master;
- (c) state whether the person appointed as receiver is also appointed as manager and, if necessary, define the scope of his managerial powers; and
- (d) contain such directions and impose such terms and conditions as may seem appropriate.

**41.03 Directions**

A receiver, or receiver and manager, may apply to a judge for directions at any time and from time to time.

**41.04 Discharge**

A receiver, or receiver and manager, may only be discharged by the order of a judge.

42

42.02

43

43.01

NOTES

Rules 11a; 32(2)

Rule 632(a)

**Rule 11a**

**11a.** In every application brought by originating notice, if the applicant desires a certificate of his pendency he shall include in his notice a claim therefor together with a description, sufficient for registration, of the lands in question, but such certificate shall not issue without leave of the court, to be obtained upon an *ex parte* application.

NOTE: See also The Interpretation Act, R.S.O. 1970, c. 225, s. 29.

**RULE 42 CERTIFICATE OF PENDING LITIGATION****42.01 Leave to Issue Required**

A certificate of pending litigation may only be issued by a registrar pursuant to an order of the court.

**42.02 Where Motion may be Made Without Notice**

Where a claim for a certificate of pending litigation together with a description, sufficient for registration, of the lands in question, has been included in the originating process, a motion for leave to issue a certificate of pending litigation may be made without notice.

**42.03 Where Motion to be Made on Notice**

Where the originating process does not include a claim for a certificate of pending litigation, a motion for leave to issue a certificate of pending litigation shall be made on notice and the Notice of Motion shall contain a description, sufficient for registration, of the lands in question.

**RULE 43 INTERPLEADER****43.01 By Stakeholder**

Where a person is under liability for any debt, money, goods or chattels, in respect of which adverse claims have been made against him by two or more persons, either by the commencement of proceedings or otherwise, he may apply to the court for relief by way of interpleader.

**Rule 32**

**32.**—(1) Upon every writ of summons the plaintiff shall endorse a concise statement of his claim, but it is not essential to set forth the precise ground of complaint or the precise remedy or relief sought (Form 7).

(2) If the plaintiff desires a certificate of *lis pendens* he shall include in the endorsement a claim therefor together with a description, sufficient for registration, of the lands in question, but such certificate shall not issue without leave of the court, to be obtained upon an *ex parte* application.

**Rule 632****632. Relief by way of Interpleader may be granted,**

(a) where the person seeking relief (hereinafter called the applicant) is under liability for any debt, money, goods or chattels, for or in respect of which he is, or expects to be, sued by two or more persons (hereinafter called the claimants) making adverse claim thereto; or

NOTES

43.02(1)  
 (2)  
 (3)  
 (4)  
 (5)

Rule 644  
 Rule 644  
 Rule 644  
 Rules 632(b); 645  
 Rule 641

**43.02 By Sheriff**

(1) A person, who makes a claim to or in respect of any property taken or intended to be taken by a sheriff in the execution of any process against another person or to the proceeds thereof, shall give notice to the sheriff of his claim and his address for service.

(2) On receipt of a claim, the sheriff shall forthwith give Notice of Claim (Form 43A) to the execution creditor who shall, within 7 days after receiving the notice, give the sheriff notice in writing whether he admits or disputes the claim.

(3) On receipt of a notice admitting a claim, the sheriff shall release any property the claim to which is admitted, and the court may restrain the bringing of a proceeding against him for or in respect of his having taken possession of the property and, unless the court otherwise orders, the execution creditor who admits the claim is only liable to the sheriff for any costs, fees and expenses incurred by the sheriff before receipt of the notice admitting the claim.

(4) On receipt of a notice disputing the claim, or on the failure of the execution creditor to give the sheriff the required notice within the time prescribed, the sheriff may apply for relief by way of interpleader.

(5) Where goods or chattels have been seized in execution by a sheriff, and any claimant alleges that he is entitled to such property by way of security for a debt, the court may order a sale of the property and direct that the proceeds therefrom, or sufficient to answer the claim, be paid into court pending determination of such claim.

**Rule 644**

644. When a sheriff finds property in the possession of a debtor against whose property he has a writ or other process in his hands, and claim is set up to such property by or on behalf of a third person who is not of possession or is in joint possession with the debtor, the claim of such third person shall be made in writing, and upon receipt thereof the sheriff shall forthwith give notice thereof to the execution creditor, and the execution creditor shall, within seven days thereafter, give notice to the sheriff that he admits or disputes the claim, and, if the execution creditor admits the title of the claimant and gives notice as directed by this rule, he is only liable to the sheriff for fees and expenses incurred before the receipt of the notice admitting the claim, and no action shall be brought against the sheriff in respect of the seizure of the property.

**RULE 632**

(b) where the applicant is a sheriff and claim is made to any money, goods or chattels, lands or tenements, taken or intended to be taken in execution under a writ of execution, or to the proceeds or value thereof, by any person other than the person against whom the process issued.

**Rule 645**

645. Where the execution creditor does not in due time admit or dispute the title of the claimant to the property and the claimant does not withdraw his claim thereto by notice in writing to the sheriff, the sheriff may apply for relief by Interpleader.

**Rule 641**

641. Where goods or chattels have been seized in execution by a sheriff, and any claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for debt, the court may order a sale, and direct the application of the proceeds of the sale in discharge of the amount due the claimant if it is not disputed, or that sufficient to answer the claim be paid into court pending trial of the claim.

43.03(1)  
(2)  
(4)

Rules 10; 636  
Rule 633  
Rule 646

## NOTES

### 43.03 Mode of Application

(1) An application for interpleader relief shall be made by Notice of Application, unless it is made in a proceeding already commenced, in which case it shall be made by Notice of Motion and, in either case, the notice shall call upon the claimants to attend on the return of the application and either to maintain or relinquish their claim.

(2) An application for interpleader relief shall be supported by an affidavit made by the applicant showing the names and addresses of all claimants to the property in question of whom the applicant has knowledge and that the applicant,

- (a) claims no beneficial interest in the property in question, other than a lien for costs, fees, charges or expenses;
- (b) does not collude with any claimant of the property; and
- (c) is willing to deliver the property in question to the court or to dispose of it as the court may direct.

(3) Notice of an application for interpleader relief shall be served upon every claimant in respect of the property in question and, except in the case of an application by a sheriff, upon every party to the proceeding.

(4) Where the applicant is a sheriff, and there is more than one execution creditor in respect of the property in question, he shall make one application and shall serve notice of the application upon all execution creditors as well as upon every claimant.

### Rule 10

10.—(1) The proceedings authorized by rules 607, 611, 612, 615, 622, 625, 629, 698 and Interpleader, other than Interpleader proceedings by a sheriff, as provided under rules 632 and 651, may be commenced by notice of motion called an originating notice.

(2) Garnishment proceedings and Interpleader proceedings by a sheriff shall be deemed to be interlocutory proceedings in the original cause or matter.

(3) An issue directed in garnishment or Interpleader proceedings or any other issue directed to be tried under these rules shall be deemed to be an action, and the judgment upon the trial of an issue shall, for the purposes of appeal, be deemed to be final and not interlocutory.

### Rule 636

636. The applicant may make a motion calling on the claimants to appear and state the nature and particulars of their claims, and either to maintain or relinquish them.

### Rule 633

633. The applicant shall satisfy the court by affidavit or otherwise,  
(a) that he claims no interest in the subject-matter in dispute, other than in respect of a lien or for costs;  
(b) that he does not collude with any of the claimants; and  
(c) that he is willing to pay or transfer the subject-matter into court, or to dispose of it as the court directs.

### Rule 646

646. Where a sheriff has more than one writ of execution against the same property or there is more than one claimant to goods seized under the execution, he shall make one application and make all the execution creditors and claimants parties.

## NOTES

## RULE 43.03 CONTINUED

(5) Where the applicant is a sheriff, notice of the application shall include the following notice:

## NOTICE TO EXECUTION CREDITORS

TAKE NOTICE that Section 5 (4) of *The Creditors Relief Act* provides that:

Where proceedings are taken by a sheriff for relief under any provisions relating to interpleader, those creditors only who are parties thereto and who agree to contribute *pro rata* in proportion to the amount of their executions or certificates to the expense of contesting any adverse claim are entitled to share in any benefit that may be derived from the contestation of such claim so far as is necessary to satisfy their executions or certificates.

(6) Where a sheriff has an execution issued from the Supreme Court, he shall make the application for interpleader relief in the Supreme Court, notwithstanding that he may have other executions issued from county or small claims courts.

(7) Every person served with notice of an application pursuant to this rule is deemed to be a party to the application.

## Rule 642

642. Where a sheriff applies for relief by interpleader and any co-contest creditor declines to join in contesting the claim of the adverse claimant, the court may direct that such creditor be excluded from any benefit that may be derived from the contestation of the claim.

## Rule 647

647. Where there is an execution from the Supreme Court, the application for interpleader shall be made in the Supreme Court notwithstanding that other executions in the sheriff's hands have issued from county or small claims courts. (Amended O. Reg. 761/78, s. 1.)

NOTES

43.04

(a)

(b)

(c)

(d)

Rule 643  
 Rule 638  
 Rule 638  
 Rule 640  
 Rule 639

**43.04 Jurisdiction on Application**

On the hearing of an application for interpleader relief the court may,

- (a) order a claimant to be made a party in a proceeding already commenced in substitution for or in addition to the applicant;
- (b) order the trial of an issue between the claimants, define the issue to be tried and direct which claimant is to be plaintiff and which defendant;
- (c) where the issue is one of law and the facts are not in dispute, decide the question without directing the trial of an issue, or order that a special case be stated for the opinion of the court;
- (d) on the request of any claimant, if, having regard to the value of the subject matter and the nature of the issues in dispute, it seems desirable to do so, determine the rights of the claimants in a summary manner;

**Rule 643**

643. The court that tries the issue may finally dispose of the interpleader proceedings, including all costs not otherwise provided for.

**Rule 638**

638. Where the claimants appear on the motion, any claimant may be made a defendant in any action already commenced in respect of the subject-matter in dispute in lieu of or in addition to the applicant, or an issue between the claimants may be stated and tried, and in the latter case the order shall direct which of the claimants is to be the plaintiff and which the defendant (Forms 82 and 83).

**Rule 640**

640. Where the question is one of law and the facts are not in dispute, the court may decide the question without directing the trial of an issue, or may order that a special case be stated for the opinion of the court.

**Rule 639**

639. The court may, with the consent of both claimants, or on the request of any claimant, if, having regard to the value of the subject-matter in dispute, it seems desirable so to do, dispose of the merits of their claims, and, subject to appeal, decide the same in a summary manner (Form 84).

NOTES

(e)

Rule 637

(f)

Rule 635

(g)

Rule 650

## RULE 43.04 CONTINUED

- (e) where a claimant fails to attend on the application, or attends and fails or refuses to comply with an order made in the proceeding, make an order declaring the claimant and all persons claiming under him to be forever barred from prosecuting his claim against the applicant and all persons claiming under him, without affecting the rights of the claimants as between themselves;
- (f) stay any further step in a proceeding;
- (g) order the costs of the applicant to be paid out of the property or proceeds;
- (h) declare that the liability of the applicant in respect of the property or the proceeds is extinguished;
- (i) make such other order as may seem just.

## Rule 637

637. Where a claimant does not appear on the motion after having been served with a notice of motion calling on him to appear and maintain or relinquish his claim, or, having appeared, neglects or refuses to comply with any order made thereafter, an order may be made declaring him and all persons claiming under him to be forever barred as against the applicant and all persons claiming under him, but the order does not effect the rights of the claimants as among themselves (Form 81).

## Rule 635

635. Where the applicant is a defendant, application for relief may be made at any time after service of the writ of summons, and the court may stay all proceedings in the action.

## Rule 650

650. The court may make all such orders respecting the satisfaction or payment of any lien or charges of the applicant as are just and reasonable.

**PRESERVATION OF RIGHTS  
PENDING LITIGATION**

**RULE 44 INTERIM RECOVERY OF PERSONAL PROPERTY**

**44.01 Motion for Interim Order**

(1) An interim order for the recovery of personal property may be obtained on a motion by the plaintiff supported by affidavit containing,

- (a) a sufficient description of the property sought to be recovered to render it readily identifiable;
- (b) the value of the property sought to be recovered;
- (c) a statement that the plaintiff is the owner or lawfully entitled to possession of the property, as the case may be;
- (d) a statement that the property was unlawfully taken from the possession of the plaintiff or unlawfully detained by the defendant, as the case may be; and
- (e) the facts and circumstances giving rise to the unlawful taking or unlawful detention.

(2) A Notice of Motion shall be served on the defendant unless the court is satisfied that the property was unlawfully taken from the plaintiff or that there is reason to believe that the defendant may attempt to prevent recovery of the property or that, for any other sufficient reason, the order should be made without notice.

**44.02 Interim Order**

An interim order for the recovery of personal property shall contain a sufficient description of the property to be recovered as to make it readily identifiable, and shall state the value of the property.

**Rule 359  
Rule 360**

**Rule 359**

359. An order of replevin may be obtained,

- (a) on motion therefor, on showing the facts of the wrongful taking or detention complained of, the value and description of the property, and that the person claiming the property is the owner thereof or is lawfully entitled to the possession thereof;
- (b) on praecipe, if the person claiming the property, his servant or agent, makes an affidavit stating,
  - (i) that the person claiming the property is the owner or lawfully entitled to the possession thereof,
  - (ii) the value thereof,
  - (iii) that the property was wrongfully taken out of the possession of the claimant, or fraudulently got out of his possession, within two months next before the making of the affidavit,
  - (iv) that the deponent is advised and believes that the claimant is entitled to the order, and
  - (v) that there is good reason to apprehend that, unless the order is issued without waiting for a motion, the delay would materially prejudice the rights of the claimant with respect to the property;
- (c) on praecipe, If the property was distrained for rent or damage feasant and the person claiming the property, his servant or agent, makes an affidavit stating,
  - (i) that the person claiming the property is the owner or is lawfully entitled to the possession thereof (describing the property),
  - (ii) the value thereof, and
  - (iii) that the property was taken under colour of a distress for rent or damage feasant,
 and in such case the order shall state that the defendant has taken and unjustly detained the property under colour of a distress for rent or damage feasant, as the case may be (Form 86).

**Rule 360**

360. The motion shall be on notice to the defendant, unless the special circumstances of the case in the opinion of the court justify the making of an ex parte order, and the court, instead of granting or refusing the order, may direct the sheriff to take a bond in less or more than treble the value of the property, or may direct him, in addition to taking a bond pursuant to rule 362, to take and detain the property until the further order of the court, instead of at once replevying the property to the plaintiff, or may order that the plaintiff, instead of giving a bond, be at liberty to pay into court to the credit of the action, subject to further order, such sum as is proper to stand as security to the defendant in the same manner and to the same extent as any bond that the plaintiff would otherwise be required to give to the sheriff.

NOTES

44.03(1)

(2)

## 44.03 Jurisdiction on Motion

## (1) Where Made on Notice

On a motion for an interim order for the recovery of personal property made on notice to the defendant, the court may,

- (a) order the plaintiff to pay into court twice the value of the property as stated in the order or such other amount as the court may direct, or to give the appropriate sheriff security in such form and amount as may be approved by the court, and direct the sheriff to take the property from the defendant and deliver it to the plaintiff;
- (b) order the defendant to pay into court twice the value of the property as stated in the order, or such other amount as the court may direct, or to give to the plaintiff security in such form and amount as may be approved by the court, and allow the property to remain in the possession of the defendant; or
- (c) make such other order as may seem just.

## (2) Where Made Without Notice

On a motion for an interim order for the recovery of personal property made without notice to the defendant, the court may,

- (a) order the plaintiff to pay into court twice the value of the property as stated in the order, or such other amount as the court may direct, or to give the appropriate sheriff security in such form and amount as may be approved by the court, and direct the sheriff to take and detain the property for a period of 10 days after service of the interim order upon the defendant before delivering it to the plaintiff; or
- (b) make such other order as may seem just.

Rule 362  
Rules 360; 365

## Rule 362

362.—(1) Before the sheriff acts on the order, he shall take a bond (Form 139) from the plaintiff with two sufficient sureties in such sum as is prescribed by the order, or, if no special provision has been made, then in treble the value of the property as stated in the order of replevin.

(2) The plaintiff may, instead of giving a bond, pay into court twice the value of the goods as stated in the order, and the sheriff may act upon a certificate of the Accountant that the money has been paid.

## Rule 360

360. The motion shall be on notice to the defendant, unless the special circumstances of the case in the opinion of the court justify the making of an ex parte order, and the court, instead of granting or refusing the order, may direct the sheriff to take a bond in less or more than treble the value of the property, or may direct him, in addition to taking a bond pursuant to rule 362, to take and detain the property until the further order of the court, instead of at once replevying the property to the plaintiff, or may order that the plaintiff, instead of giving a bond, be at liberty to pay into court to the credit of the action, subject to further order, such sum as is proper to stand as security to the defendant in the same manner and to the same extent as any bond that the plaintiff would otherwise be required to give to the sheriff.

## Rule 365

365. Where the order is issued on praecipe under clause b of rule 360, the sheriff shall take and detain the property, and shall not replevy it to the plaintiff without the order of the court, but may, after seven days from the time of taking it, re-deliver it to the defendant, unless in the meantime the plaintiff obtains and serves on the sheriff an order directing a different disposition of the property.

## \* Rule 362

(2) The plaintiff may, instead of giving a bond, pay into court twice the value of the goods as stated in the order, and the sheriff may act upon a certificate of the Accountant that the money has been paid.

**NOTES**

44.04  
44.05  
44.07(1)

Rules 362; 363  
Rule 361  
Rule 362

**\* 44.04 Condition and Form of Security**

Where an interim order for the recovery of personal property requires either party to provide security, the condition of the security shall be that the party providing the security will return the property to the opposite party without delay should he be ordered to do so, and pay any damages and costs the opposite party may have sustained by reason of the interim order. Where the security is by bond, it shall be according to Form 44A and shall remain in force until the security is released pursuant to this rule.

**44.05 Rescinding Order**

The defendant may apply to the court at any time to rescind or vary an interim order for the recovery of personal property, or to stay proceedings thereunder, or for any other relief with respect to the return, safety or sale of the property or any part thereof by Notice of Motion served within 10 days and returnable within 15 days after the order came to his attention.

**44.06 Release of Security**

Any security furnished pursuant to an order made under this rule may be released on the filing of the written consent of the parties or by order of the court.

**\* 44.07 Duty of Sheriff**

(1) Before a sheriff proceeds to enforce an order for the recovery of personal property, he shall satisfy himself that the plaintiff, or the defendant, has furnished any security required by the order.

**Rule 362**

362.—(1) Before the sheriff acts on the order, he shall take a bond (Form 139) from the plaintiff with two sufficient sureties in such sum as is prescribed by the order, or, if no special provision has been made, then in treble the value of the property as stated in the order of replevin.

\* (2) The plaintiff may, instead of giving a bond, pay into court twice the value of the goods as stated in the order, and the sheriff may act upon a certificate of the Accountant that the money has been paid.

**Rule 363**

363. Where an order of replevin is issued for any property that had not been previously taken out of the plaintiff's possession and for which the plaintiff might bring an action for conversion, the defendant is entitled, if the plaintiff fails in the action, to be fully indemnified against all damages sustained by the defendant, including any extra costs that he may incur in defending the action, and the bond shall be conditioned so as to require the plaintiff and the sureties to indemnify and save harmless the defendant from all loss and damage that he may sustain by reason of the seizure and of any deterioration of the property in the meantime, in the event of its being returned, and all costs, charges and expenses that the defendant may incur, including reasonable costs not taxable between party and party, but this provision shall not be required in cases of distress for rent or damage feraient.

**Rule 361**

361. The defendant may apply to the court to discharge, vary or modify the order, or to stay proceedings thereunder, or for any other relief with respect to the return, safety or sale of the property or any part thereof or otherwise.

(2)  
(4)  
44.08

Rule 364  
Rule 366  
Rule 367(1)

## RULE 44.07 CONTINUED

(2) The sheriff shall serve the interim order on the defendant as soon as possible after the property or any part thereof has been recovered.

(3) Where the sheriff is unable to comply with the order, or it is dangerous for him to do so, he may apply to the court for directions.

(4) Upon the expiration of 10 days after the service of the order, the sheriff shall report without delay to the plaintiff as to the property he has recovered, and, where he has failed to recover possession of all or part of the property, as to the property he has failed to recover and the reason therefor.

### 44.08 Where Property Removed

Where the sheriff reports that the defendant has prevented him from recovering the property or any part thereof, the plaintiff may apply for an order directing the sheriff to take any other personal property of the defendant, to the value of the property which the sheriff was prevented from recovering, and deliver it to the plaintiff who shall hold it until the defendant delivers the property in question to him.

### Rule 364

364. The sheriff shall not serve a copy of the writ of summons or order until he has replied to the property, or some part thereof if he cannot reply the whole.

### Rule 366

366. The sheriff shall return the order on or before the tenth day after the service thereof, and shall transmit annexed thereto,

- (a) the names of the sureties in, and the date of the bond taken from the plaintiff, and the name or names of the witnesses thereto;
- (b) the place of residence and address of the sureties;
- (c) the number, quantity and quality of the articles of property replied, and, in case he has replied only a portion of the property and cannot reply the residue by reason of its having been elogned out of his county, or not being in the possession of the defendant or of any other person for him, he shall state in his return the articles that he cannot reply and the reason therefor.

### Rule 367

367.—(1) Where the sheriff makes a return of the property distrained, taken or detained having been elogned, the court may make an order (Form 57) directing the sheriff to take in withernam goods and chattels of the defendant.

(2) Where a sheriff makes a return that the whole or a part of the property has been elogned, or that for any reason it cannot be replied, the plaintiff may, if he so elects, serve the writ of summons, and, in his statement of claim, claim either the return of the goods and damages for their detention, or damages for their conversion.

NOTES

**SETTING ACTIONS DOWN  
FOR TRIAL**

**RULE 45 PLACE OF TRIAL**

**45.01 To be Named in Statement of Claim**

The plaintiff shall name as the place of trial in his Statement of Claim the place where the court normally sits in the county in which he proposes that the action shall be tried.

**45.02 Supreme Court Actions**

Subject to any special statutory provisions, where the action is commenced in the Supreme Court, the place of trial to be named shall be regulated as follows:

- (a) Where all the parties reside in the county where the cause of action arose, the place to be named shall be in that county.
- (b) Where the action is against a municipal corporation, the place to be named shall be in the county that constitutes that municipality or in which that municipality is situate.
- (c) In any other action, the place to be named may be in any county.

**45.03 County Court Actions**

Subject to any special statutory provisions, the place of trial to be named in a county court action shall be regulated by the rule governing the place of trial in a Supreme Court action and the action shall be commenced in the county in which the action is to be tried.

**Rule 245**

245. Subject to any special statutory provisions, the place of trial of an action shall be regulated as follows:

- 1. The plaintiff in his statement of claim shall name the county in which he proposes that the action shall be tried.
- 2. Where the cause of action arose and the parties reside in the same county, the place to be named shall be that county.
- 3. Except in mortgage actions, where possession of land is claimed, the place to be named shall be the county in which the land is situate.
- 4. In matrimonial causes,
  - (a) where the petitioner is resident in Ontario the place to be named shall be the county in which either spouse ordinarily resides, and
  - (b) where the petitioner is resident out of Ontario the place to be named shall be the county in which the respondent ordinarily resides.
- 5. The action shall be tried in the county so named, unless otherwise ordered upon the application of either party.

NOTES

## PLACE OF TRIAL

## RULE 45

## Rule 245

## 45.04 Motion to Change the Place of Trial

(1) Any party may apply to the court at any time to change the place of trial. Except where the choice of the plaintiff is contrary to the rules or clearly capricious, the applicant must show that it would be more convenient to have the action tried at the place proposed by him or that, in the interests of justice, the action ought to be tried at that place.

(2) In a county court action, a motion to change the place of trial may be made to the judge of the county court in which the action was commenced or to a master of the Supreme Court. Where such an order is made, the action shall be transferred to the appropriate county court. Thereafter, the action shall be styled in the court to which the proceeding is transferred and shall be proceeded with as if it had been commenced in that court.

(3) On any motion to change the place of trial, no agreement made prior to the commencement of an action as to the place of trial shall have any force or effect.

245. Subject to any special statutory provisions, the place of trial of an action shall be regulated as follows:

1. The plaintiff in his statement of claim shall name the county in which he proposes that the action shall be tried.
2. Where the cause of action arose and the parties reside in the same county, the place to be named shall be that county.
3. Except in mortgage actions, where possession of land is claimed, the place to be named shall be the county in which the land is situate.
4. In matrimonial causes,
  - (a) where the petitioner is resident in Ontario the place to be named shall be the county in which either spouse ordinarily resides, and
  - (b) where the petitioner is resident out of Ontario the place to be named shall be the county in which the respondent ordinarily resides.
5. The action shall be tried in the county so named, unless otherwise ordered upon the application of either party.

## SETTING ACTIONS DOWN FOR TRIAL

## RULE 46 JURY NOTICE

## 46.01 Actions Which may be Tried With a Jury

Subject to the provisions of any statute, any party desiring to have the issues of fact tried or the damages assessed by a jury may, at any time before the close of pleadings, serve on every other party to the action and file, with proof of service, a Jury Notice (Form 46A) in which case, unless otherwise ordered, the facts shall be tried or the damages assessed accordingly.

## 46.02 Striking Out Jury Notice

(1) Where a Jury Notice has been served in an action required by statute to be tried without a jury, any party to the action may apply to the court for an order striking out such notice.

(2) Where a Jury Notice has been served and filed pursuant to Rule 46.01, any party may apply to a judge at any time for an order striking out the notice. Where it appears to the judge that the action is one which ought to be tried without a jury he shall make an order striking out the notice, and, in case the action has been placed on a list of jury actions for trial, he shall order the action to be transferred to a list of non-jury actions for trial. The refusal of such an order shall not interfere with the discretion of the trial judge, in a proper case, to try the action without a jury.

## Rule 400

400.—(1) When an application is made to a judge for an order striking out a jury notice and it appears to him that the action is one that ought to be tried without a jury, he shall direct that the issues shall be tried and the damages assessed without a jury, and, in case the action has been entered for trial, shall direct the action to be transferred to the non-jury list. [Amended, O. Reg. 520/78, s. 16.]

(2) The refusal of such an order by the judge does not interfere with the right of the judge presiding at the trial to try the action without a jury. [Amended, O. Reg. 520/78, s. 17.]

(3) The judge presiding at a jury sitting in Toronto may in his discretion strike out the jury notice and transfer the action for trial to a non-jury sitting, and this power may be exercised notwithstanding that the case is not on the peremptory list for trial before the said judge.

NOTES

47

47.01  
47.02(1)  
47.03  
47.04

Rule 246  
Rules 171b(2); 246; 248; 249  
Rules 246; 249  
Rules 246; 249

**RULE 47 PROCEDURE ON SETTING DOWN****47.01 When Action may be Set Down and by Whom**

At any time after the close of pleadings, any party to an action, including a party to any counterclaim or cross-claim in the action who is not himself in default under these rules, or under any order of the court, may set the action, including any counterclaim or cross-claim therein, down for trial.

**47.02 How Action is to be Set Down**

(1) Where an action is defended, the action may be set down for trial by,

- (a) serving on every other party and filing a Notice of Trial (Form 47A) with proof of such service; and
- (b) filing a record prepared in accordance with the requirements of Rule 4.09.

(2) Where an action is undefended, the action may be set down for trial by filing the record required by paragraph (1)(b).

**47.03 Placing Undefended Action on List for Trial**

An undefended action shall be placed on the list for the trial of undefended actions forthwith after it has been set down for trial.

**47.04 Placing Defended Action on List for Trial**

A defended action shall be placed on the list for the trial of defended actions with or without a jury, as the case may be, when,

- (a) 60 days have elapsed from the date the action was set down for trial; or
- (b) forthwith upon the filing of a consent in writing by every other party.

**Rule 171b—(Continued)**

(2) The party setting the issue down shall serve notice of trial forthwith upon the opposite party and the plaintiff and file the notice with proof of service thereof with the officer with whom the issue was set down within ten days after the issue was set down.

**Rule 248**

248.—(1) The party setting an action down for trial shall file at that time a record containing a certified copy of,

- (a) the pleadings and particulars;
- (b) any statement of property or statement of financial information filed in the action pursuant to the provisions of The Family Law Reform Act, 1978; and
- (c) any order containing directions respecting the trial.

(Amended, O. Regs. 36/73, s. 26; 216/78, s. 11.)  
(2) Such record shall contain the full style of cause, and shall show the date when the writ was issued, and shall give the names of the solicitors for the several parties, and shall show, if such be the case, that judgment has been signed or the pleadings have been noted closed as against any parties in default.

**Rule 249**

249.—(1) In all actions other than matrimonial causes and actions wherein pleadings have been noted closed, notice of trial (Forms 35 and 37) shall be given by the party setting down the action within ten days thereafter and he shall forthwith file such notice and proof of service thereof with the officer with whom the action was set down.

(2) Save as provided in rule 799, in matrimonial causes notice of hearing (Forms 146 and 147) shall be given to all parties to the proceedings by the party setting the proceedings down for hearing within twenty days thereafter, and he shall forthwith file such notice and proof of service thereof with the officer with whom the proceedings were set down.

(3) Except in actions in the Supreme Court to be tried at Toronto, an action shall be set down and notice of trial (Form 35) shall be served ten days before the day fixed for the commencement of the sittings for which such notice of trial is given and unless otherwise ordered by a judge the notice shall be filed not later than six clear days before the first day of such sittings.

(4) [Revoked, O. Reg. 36/73, s. 27(c).]

(5) Any party who has been served with notice of trial may forthwith file in like manner the notice served upon him with proof of service thereof.

(6) When notice of trial with proof of service thereof on all parties required to be served is filed, the action shall forthwith be placed on the list of cases for trial at the sittings for which the action was set down.

(7) If two or more parties have set the action down for trial, it shall be placed on the list in the order of the first entry. (Amended, O. Regs. 36/73, s. 27(a) to (c); 127/76, s. 1.)

47.05  
47.06

Rules 171b(3); 246  
Rules 171b(3); 246

#### PROCEDURE ON SETTING DOWN                    RULE 47

##### 47.05 Effect of Setting Down or Consent

(1) Any party who sets the action down for trial and any party who consents to the action being placed on the list for trial shall, by virtue of so doing, be deemed to have certified that he is ready for trial and he shall not initiate or continue any motion or any form of discovery without leave of the court.

(2) Nothing in paragraph (1) shall relieve a party from any obligation imposed upon him by Rules 31.07, 31.09, 32.09 and 52.01, or preclude him from resorting to the provisions of Rules 31.10, 47.12 and 51.01.

##### 47.06 Effect of Action Being Placed on List for Trial

As soon as an action is placed on the list for trial, all parties shall be deemed to be ready for trial and, subject to any order made under Rule 47.05, no party shall be entitled to an adjournment of the trial on the ground that some interlocutory proceeding or some form of discovery has not been initiated or completed.

##### 47.07 Position of Actions on List for Trial

When an action is entitled to be placed on a list for trial in accordance with this rule, it shall be placed at the foot of the appropriate list.

#### Rule 246

246.—(1) Where a statement of defence or answer has been delivered and pleadings are closed, any party who has delivered a pleading and is ready for trial may serve upon every other party who has delivered a pleading and file, with proof of service, a certificate of readiness according to Form 38.

(2) Where all parties entitled to do so have delivered certificates of readiness, any such party may set the action down for trial.

(3) Subject to any order enlarging or abridging the time, where one or more but not all parties entitled to do so have delivered a certificate of readiness and sixty days have elapsed since the delivery of the first such certificate, any such party may set the action down for trial.

(4) Except by leave of the court, a party who has delivered a certificate of readiness, shall not initiate or continue any interlocutory proceedings or any form of discovery. (Amended, O. Regs. 520/71, s. 5; 36/73, s. 24.)

#### RULE 171B

(3) The provisions of rule 248 shall apply mutatis mutandis.

NOTES**47.08 Separate Lists for Trial**

Actions to be tried with a jury shall be placed on a list of jury actions for trial and actions to be tried without a jury shall be placed on a list of non-jury actions for trial; provided, however, that in the case of actions to be tried elsewhere than at Toronto, non-jury actions shall be placed at the end of the list of jury actions for trial when the next scheduled sitting is for the trial of jury actions only.

**47.09 Separate List for Actions Requiring Speedy Trial**

There shall be a separate list of cases requiring speedy trial on which only those cases in respect of which a speedy trial has been ordered shall be listed.

**47.10 Actions Traversed or Remaining on List at Conclusion of Sittings**

Unless otherwise ordered by the trial judge, all actions traversed to the next sitting and all actions remaining on the list for trial at the conclusion of any sittings shall stand in the same order at the head of the next appropriate list of actions for trial, and it shall not be necessary to again set the action down for trial or serve and file another Notice of Trial.

**47.11 Actions Struck off List**

Where an action is struck off the list, it shall not be restored to any list for trial except by leave of a judge, but any such action may be re-set down for trial and a new Notice of Trial served and filed, with proof of service.

**Rule 250**

250. An action to be tried without a jury elsewhere than at Toronto may be set down for trial at any sittings appointed for the place named for the trial of such action.

**Rule 251**

251. Actions not tried, not struck off the list or disposed of at any sittings for which they were on the list for trial, unless otherwise ordered by a judge, shall stand in their respective order at the head of the next succeeding list, and it shall not be necessary to serve or file further notice of trial.

**47.12 Fixing Date for Trial in Special Cases**

(1) Where an action has been set down for trial and there is some special reason why the date for trial ought to be fixed, any party may apply to the Chief Justice of the High Court, or to anyone designated by him, by serving and filing, with proof of service, a Request to Fix Date for Trial (Form 47B).

(2) Any party served with a Request to Fix Date for Trial may, within 10 days thereafter, serve and file, with proof of service, a Response to Request to Fix Date for Trial (Form 47D).

(3) Such a request may be made jointly by all parties to the action by filing a Joint Request to Fix Date for Trial (Form 47C).

(4) If the Chief Justice of the High Court, or his designee, is not satisfied that he can dispose of the request without hearing counsel, he may appoint a time for the making of oral representations.

(5) Where a request is made under this sub-rule, the request and the disposition thereof by the Chief Justice, or his designee, shall be attached by the registrar to the original record.

(6) In county court actions, such a request shall be made to the county court judge, or his designee.

**47.13 Application of Rule**

(1) The provisions of this rule shall apply to any proceeding wherein the court has directed the trial of an issue, unless otherwise ordered.

(2) Except as provided in Rule 47.11, the provisions of this rule shall not apply where the court has ordered an action to be placed on a list of actions requiring speedy trial.

**47.14 Duty to Inform Registrar**

Every party to an action set down for trial shall promptly inform the registrar as to any settlement of the action.

NOTES

48

- 48.01  
48.02(1)  
(2)

- Rule 306  
Rule 306  
Rule 308

**PREPARATION FOR TRIAL****RULE 48 PAYMENT INTO COURT IN SATISFACTION****48.01 Where Available**

In any action a defendant may pay into court a sum of money in satisfaction of any claim made by a plaintiff, or, where there is more than one claim, in satisfaction of any one or more of them.

**48.02 Time for Payment into Court**

(1) Except where tender before action is pleaded, payment into court in satisfaction may be made at any time before the commencement of the trial; provided, however, that where such payment into court is made less than 10 days before the day on which the trial commences, it shall have no effect on the costs of the action unless, in the meantime, it has been accepted by the plaintiff.

(2) Where tender before action is pleaded, the sum alleged to have been tendered shall be paid into court forthwith.

**Rule 306**

306. A defendant may, at any time, pay into court a sum of money in satisfaction of the claim or cause of action, or of one or more of the claims or causes of action for which the plaintiff sues. (Amended, O. Regs. 307/72, s. 3(a); 628/76, s. 6.)

(2) [Revoked, O. Reg. 307/72, s. 3(b).]

**Rule 308**

308. Where tender before action is pleaded, the sum alleged to have been tendered shall be paid forthwith into court.

NOTES**48.03 Notice of Payment into Court**

On making a payment into court under this rule, a defendant shall forthwith serve upon the plaintiff a Notice of Payment into Court (Form 48A) which shall specify the claim or claims in respect of which such payment is made and the amount of such payment in respect of each claim, but such Notice shall not be filed.

**48.04 When Payment into Court may be Revoked**

(1) Except where tender before action is pleaded, a payment into court is irrevocable for a period of 10 days from the date of service of the Notice of Payment into Court but, unless and until accepted by the plaintiff, any such payment may thereafter be revoked by the defendant serving upon the plaintiff a Notice of Revocation (Form 48B) at any time before the commencement of the trial.

(2) Where tender before action is pleaded, a payment into court is irrevocable.

(3) Where a Notice of Revocation has been served, the payment into court so revoked shall have no effect on the costs of the action.

(4) Upon filing a Notice of Revocation with proof of service thereof upon the plaintiff, the defendant shall be entitled to have the money in court paid out to him.

**Rule 309**

309.—(1) A defendant paying money into court shall forthwith serve upon the plaintiff notice of payment in and, unless otherwise ordered by the court, shall specify in such notice the claim or cause or causes of action in respect of which payment is made, and the sum paid in respect of each claim or cause of action.

(2) The notice shall be in Form 27 or Form 27a, as applicable.

## NOTES

48.05 (a)  
 (b)  
 48.06

**48.05 Effect of Payment into Court**

Except in an action in which a payment is made under *The Libel and Slander Act*, or in which tender before action is pleaded,

- (a) payment into court under this rule shall be deemed to be an offer of compromise made without prejudice and shall not be taken as an admission of liability for the claim in respect of which it is made, unless the Notice of Payment into Court otherwise provides; and
- (b) no statement of the fact that money has been paid into court under this rule shall be contained in the pleadings, and no communication of that fact shall be made to the trial judge or the jury until all questions of liability and the amount of debt or damages have been decided.

**48.06 Notice of Acceptance**

Where money is paid into court under this rule, the plaintiff may accept the whole sum, or any one or more of the specified sums, in satisfaction of the claim or claims to which the specified sum or sums relate by serving upon the defendant and filing, with proof of service, a Notice of Acceptance (Form 48C).

**48.07 Time for Acceptance**

Notice of Acceptance may be served and filed at any time before the commencement of the trial unless, in the meantime, the payment into court has been revoked by the defendant.

Rule 307  
 Rule 317  
 Rule 311

**Rule 307**

307. Payment of money into court shall not, unless expressly so stated, be deemed an admission of the cause of action in respect of which it is paid.

**Rule 317**

317. Except in an action to which a defence of tender before action is pleaded or in which a payment is made under *The Libel and Slander Act*, no statement of the fact that money has been paid into court under the preceding rules shall be inserted in the pleadings, and no communication of that fact shall at the trial of any action be made to the judge or jury until all questions of liability and amount of debt or damages have been decided, but the judge shall, in exercising his discretion as to costs, take into account the fact that the money has been paid into court, the amount of such payment, the date and time of delivery of notice of payment in and whether liability has been admitted or denied. [Amended, O. Reg. 285/71, s. 8.]

**Rule 311**

311.—(1) Where money is paid into court under rule 306, the plaintiff, if not juror and personally entitled to the money paid in, may accept the whole sum or any one or more of the specified sums in satisfaction of the claim or claims or of the cause or causes of action to which the specific sum or sums relate, by giving notice to each defendant as in Form 28 and filing same. [Amended, O. Reg. 285/71, s. 6.]

(2) Acceptance of a confession of judgment which has been delivered under rule 306a(t) shall be effected by giving notice to each defendant and to the Attorney General for Ontario as in Form 28a and by filing same.

48.08 (1)  
 (2)  
 (3)

Rule 312  
 Rule 313  
 Rule 315

## NOTES

### PAYMENT INTO COURT IN SATISFACTION

### RULE 48

#### 48.08 Effect of Acceptance

(1) Subject to paragraph (2), where the plaintiff accepts the money paid into court in satisfaction of all claims in the action, the plaintiff may tax his party and party costs of the action to the date he was served with the Notice of Payment into Court and, unless the defendant pays those costs within 7 days after taxation, issue execution therefor.

(2) Where the defendant has pleaded tender before action and the plaintiff accepts the money paid into court in satisfaction of all claims made in the action, the defendant may, unless otherwise ordered, tax his party and party costs of the action and the amount thereof shall be paid to him out of the money in court, and the balance shall be paid to the plaintiff.

(3) Where the money paid into court in satisfaction has been accepted, all further proceedings in the action or in respect of the specified claim or claims, as the case may be, shall be stayed and the money shall not be paid out except upon the filing of an affidavit of the plaintiff, or his solicitor, that the plaintiff is not under disability and is personally entitled to the money, or by the order of a judge.

#### Rule 312

312. Where the defendant does not allege tender before action and the plaintiff takes the money in satisfaction of all the causes of action, he may tax his costs of the action on the scale of fees for the court appropriate to the amount taken and issue execution therefor, unless the defendant pays them within forty-eight hours after taxation. [Amended, O. Reg. 285/71, s. 7.]

#### Rule 313

313. Where the defendant alleges tender before action and the plaintiff elects to take the money in satisfaction unless otherwise ordered the defendant may tax his costs, and the amount allowed him shall be paid to him out of the money in court and the balance shall be paid to the plaintiff.

#### Rule 315

315. Where moneys have been accepted pursuant to rule 311, all further proceedings in the action or in respect of the specified claim, cause or causes of action, as the case may be, shall be stayed and the money shall not be paid out except in pursuance of an order of a judge, or upon the consent of all parties verified by an affidavit of the plaintiff or his solicitor showing that the plaintiff is *in sul juris* and personally entitled to the money.

48.09 (1) (a)  
 (b)  
 (2)

Rule 316(1)  
 Rule 316(2)  
 Rule 317

**48.09 Effect of Failure to Accept**

(1) Where money is paid into court under this rule and the plaintiff does not accept the sum so paid in satisfaction of the claim in respect of which the payment into court was made, but proceeds with the action in respect of such claim,

(a) the money shall remain in court, unless the payment into court has been revoked, and shall not be paid out except upon filing the consent of all parties and an affidavit by the party to whom payment out is to be made, or his solicitor, that such party is not under disability and is personally entitled to the money, or by the order of a judge; and

(b) the amount paid into court shall be applied, so far as is necessary, in satisfaction of any judgment recovered by the plaintiff against the defendant, and the balance, if any, shall be repaid to the defendant.

(2) Where a Notice of Payment into Court was served at least 10 days before the day on which the trial commenced and the payment into court has not been revoked, a plaintiff, who fails to obtain judgment for more than the amount paid into court, shall only be entitled to his party and party costs to the date of service of the Notice of Payment into Court and the defendant shall be entitled to his party and party costs from the date of such service, unless the trial judge otherwise orders.

**Rule 316**

316.—(1) Where money is paid into court and the plaintiff does not accept, in satisfaction of the claim or cause of action in respect of which the payment into court has been made, the sum so paid in, but proceeds with the action in respect of such claim or cause of action, the money shall remain in court and shall not be paid out except in pursuance of an order of a judge or upon the consent of all parties verified as provided in rule 315.

(2) If the plaintiff proceeds with the action in respect of such claim or cause of action, or any part thereof, and recovers less than the amount paid into court, the amount paid in shall be applied, so far as is necessary, in satisfaction of the plaintiff's claim, and the balance, if any, shall be repaid to the defendant, but, if the defendant succeeds in respect of such claim or cause of action, the whole amount shall be repaid to him.

**Rule 317**

317. Except in an action to which a defence of tender before action is pleaded or in which a payment is made under The Libel and Slander Act, no statement of the fact that money has been paid into court under the preceding rules shall be inserted in the pleadings, and no communication of that fact shall at the trial of any action be made to the judge or jury until all questions of liability and amount of debt or damages have been decided, but the judge shall, in exercising his discretion as to costs, take into account the fact that the money has been paid into court, the amount of such payment, the date and time of delivery of notice of payment in and whether liability has been admitted or denied. (Amended, O. Reg. 285/71, s. 8.)

48.11(1)  
48.12

Rule 314  
Rule 318

## NOTES

### 48.10 Interest on Money in Court

Any defendant who has made a payment into court under this rule is entitled to the interest earned on that payment while it remained in court, unless that payment is not sufficient to satisfy the judgment obtained by the plaintiff, in which case the plaintiff is entitled to the whole or any part of such interest as may be necessary to satisfy his judgment, unless otherwise ordered.

### 48.11 By Multiple Defendants

(1) Where two or more defendants are jointly, or jointly and severally, liable to the plaintiff in respect of any particular claim or claims, any payment into court in satisfaction of any such claim or claims shall be deemed to have been made by, or on behalf of, all such defendants and Notice of Payment into Court shall be served on all of the other defendants as well as upon the plaintiff.

(2) The acceptance of any such payment by the plaintiff shall release all such defendants from any further liability to the plaintiff in respect of such claim or claims.

### 48.12 Application to Counterclaim

The provisions of this rule shall apply, with any necessary modification, to any counterclaim.

### Rule 314

314. Money may be paid into court under rule 306 by one or more of several defendants sued jointly or in the alternative upon notice to the other defendant or defendants.

### Rule 318

318. Any defendant to a counter-claim may pay money into court in respect thereof and the foregoing rules apply mutatis mutandis to the money so paid in.

NOTES**RULE 49 OFFER TO SETTLE****49.01 Definitions**

*In this rule,*

*plaintiff* includes an applicant;

*defendant* includes a respondent.

**49.02 Where Available**

Any party to a proceeding may serve upon an adverse party an offer in writing to settle any claim in a proceeding and, where there is more than one claim, to settle any one or more of them, on the terms therein specified.

**49.03 Time for Making Offer**

An offer to settle may be made at any time before the court disposes of the claim or claims in respect of which the offer is made; provided, however, that where such offer to settle is made less than 10 days before the day on which the trial or hearing of the proceeding is commenced, the cost consequences prescribed by this rule shall not apply thereto unless, in the meantime, it has been accepted.

**49.04 When Offer to Settle may be Revoked**

(1) An offer to settle may be revoked by the party who made the offer serving upon the party to whom the offer was made a notice of revocation at any time before it is accepted.

(2) Where an offer to settle stipulates a time for acceptance and is not accepted within the time so stipulated, it shall be deemed to have been revoked.

(3) The cost consequences prescribed by this rule shall not apply to an offer to settle which has been revoked.

**Rule 775i**

775i.—(1) A party may serve on another party an offer to settle any claim made in an application under the Act or joined with a claim for divorce in a petition.

(2) An offer may be accepted at any time before the court makes an order disposing of an issue in respect of which the offer is made by serving notice of acceptance on the party who made the offer.

(3) An offer may be withdrawn at any time before the offer is accepted by serving a notice of withdrawal on the party to whom the offer was made.

(4) Where an offer is accepted, the court may incorporate any of its terms into an order and, in exercising its discretion as to costs, may take into account the terms of the offer and the date on which the offer was served.

(5) Where an offer is not accepted, no communication respecting the offer shall be made to the court until the question of costs comes to be decided, and the court, in exercising its discretion as to costs, may take into account the terms of the offer and the date on which the offer was served.

(6) Where an offer is withdrawn no communication respecting the offer shall be made to the court at any time. [Now, O. Reg. 216/78, s. 19.]

NOTES**49.05 Effect of Offer**

(1) An offer to settle shall be deemed to be an offer of compromise made without prejudice, and shall not be taken as an admission of liability, unless the offer to settle otherwise provides.

(2) No statement of the fact that an offer to settle has been made shall be contained in the pleadings, and no communication of that fact shall be made to the court or jury on the trial or hearing of the proceeding until after all questions of liability and the relief to be granted have been decided.

**49.06 Acceptance of Offer**

Where an offer to settle has been served, the party to whom the offer is made may accept such offer by serving notice of acceptance on the party who made the offer.

**49.07 Time for Acceptance**

A notice of acceptance may be served at any time before the court disposes of the claim or claims in respect of which the offer is made, unless, in the meantime, the offer has been revoked.

**49.08 Effect of Acceptance**

(1) Where any party to an accepted offer to settle fails to comply with the terms thereof, the other party may, subject to the provisions of paragraph (2), apply to the court,

(a) for judgment in the terms of the accepted offer; or

(b) where the defaulting party is a plaintiff, to have his proceeding dismissed or, where the defaulting party is a defendant, to have his defence to the proceeding struck out.

(2) Where the accepted offer to settle is the settlement or compromise of a claim made by or on behalf of a person under disability, the provisions of paragraph (1) shall not apply until the settlement or compromise has been approved as provided in Rule 7.07.

NOTES

## 49.08 CONTINUED

(3) Where the accepted offer is silent as to costs, and the offer was made by the defendant and accepted by the plaintiff, the plaintiff may tax his party and party costs of the proceeding to the date he was served with the offer to settle and, unless the defendant pays those costs within 7 days after taxation, issue execution therefor.

(4) Where the accepted offer is silent as to costs, and the offer was made by the plaintiff and accepted by the defendant, the plaintiff may tax his party and party costs of the proceeding to the date he was served with the notice of acceptance and, unless the defendant pays those costs within 7 days after taxation, issue execution therefor.

## 49.09 Effect of Failure to Accept

(1) Where an offer to settle was made by a plaintiff at least 10 days before the day on which the trial or hearing of the proceeding commenced and the offer has not been revoked, a plaintiff who obtains a judgment as favourable, or more favourable, than the terms of the offer to settle, shall be entitled to his party and party costs to the date of the service of the offer to settle and his solicitor and client costs thereafter, unless otherwise ordered.

(2) Where an offer to settle was made by a defendant at least 10 days before the day on which the trial or hearing of the proceeding commenced and the offer has not been revoked, a plaintiff who fails to obtain a judgment more favourable than the terms of the offer to settle shall only be entitled to his party and party costs to the date of the service of the offer to settle and the defendant shall be entitled to his party and party costs from the date of such service, unless otherwise ordered.

**NOTES****49.10 Multiple Defendants**

Where two or more defendants are jointly, or jointly and severally, liable to the plaintiff in respect of any particular claim or claims, the cost consequences prescribed by Rule 49.09 shall not apply to an offer to settle, unless,

- (a) in the case of an offer made by the plaintiff, the offer is made to all such defendants, and is an offer to settle such claim or claims as against all such defendants; or
- (b) in the case of an offer made to the plaintiff, the offer is made by all such defendants and is an offer to settle such claim or claims against all such defendants and, by the terms of the offer, they are made jointly and severally liable to the plaintiff for the whole amount of the offer.

**49.11 Discretion of Court**

Notwithstanding the provisions of this rule, the court, in exercising its discretion as to costs, may take into account any offer to settle made in writing, the date the offer to settle was served and the terms thereof.

**49.12 Offer to Contribute**

(1) Where two or more defendants are jointly, or jointly and severally liable to the plaintiff in respect of any particular claim or claims, any one of such defendants may make an offer in writing to any other such defendant to contribute toward a settlement of such claim or claims.

(2) The provisions of Rules 49.05 and 49.11 shall apply to an offer to contribute as if it were an offer to settle.

**49.13 Application to Counterclaims, Cross-Claims or Third Party Claims**

The provisions of this rule shall apply, with any necessary modification, to any counterclaim, cross-claim or third party claim.

NOTES**RULE 50 PRE-TRIAL CONFERENCE****50.01 Where Available**

Where a proceeding has been set down for trial or hearing, a judge may, on the application of any party, or on his own motion, direct the solicitors for the parties, either with or without the parties, or any party not represented by a solicitor, to appear before him for a pre-trial conference to consider,

- (a) the simplification of the issues;
- (b) the possibility of obtaining admissions that may facilitate the trial or hearing;
- (c) the quantum of damages, where damages are claimed;
- (d) the estimated duration of the trial or hearing;
- (e) the advisability of having the court appoint an expert;
- (f) the advisability of obtaining a fixed date for the trial or hearing;
- (g) the advisability of directing a reference; and
- (h) any other matter that may assist in the just, least expensive and most expeditious disposition of the proceeding on its merits.

**50.02 Memorandum or Order**

At the conclusion of the conference, counsel may sign a memorandum reciting the results of the conference and the court may make an order giving such directions as it considers necessary or advisable, and any such memorandum or order shall bind the parties, provided that the judge at the trial or hearing may modify the order as he deems just.

**Rule 244 (new rule)**

**244(1)** When an action, cause or matter has been set down for trial or hearing, the Court, upon the application of a party or upon its own motion, may, in its discretion, direct the solicitors for the parties or any party not represented by solicitor, to appear before it, in the case of the solicitors, with or without the parties, for a conference to consider:

- (a) the simplification of the issues;
- (b) the possibility of obtaining admissions which might facilitate the trial or hearing;
- (c) the quantum of damages;
- (d) estimating the duration of the trial;
- (e) fixing a date for the trial or hearing;
- (f) the advisability of directing a reference; or
- (g) any other matters that may aid in the disposition of the action, cause or matter or the attainment of justice.

**(2)** Following the conference, counsel may sign a memorandum reciting the results of the conference and the Court may make an order giving such directions as the Court considers necessary or advisable and no such memorandum or order shall be attached to the record and shall bind the parties, provided that the judge at the trial or hearing may modify the order as he deems just.

**(3)** The judge who conducts a pre-trial conference in any action, cause or matter shall be deemed not to be seized of such action, cause or matter and shall not thereafter try or hear such action, cause or matter.

**(4)** All documents which may be of assistance in achieving the purposes of the pre-trial conference, such as medical reports and reports of experts, shall be made available to the judge presiding at the pre-trial conference.

**(5)** Unless otherwise ordered by the judge presiding at the pre-trial conference, the costs of the pre-trial conference shall be costs in the cause.

**(6)** Nothing in this rule shall prevent a judge before whom a case has been called for trial from holding such a conference either before or during the trial without disqualifying himself from trying the action. [See O. Reg. 32/78, s. 2; amended, O. Reg. 933/79, s. 4.]

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**50.03 Pre-Trial Judge Cannot be Trial Judge**

A judge does not become seized of the proceeding by presiding at the pre-trial conference, but he is thereafter disqualified from presiding at the trial or hearing unless otherwise directed by the Chief Justice of the High Court.

**50.04 Documents to be Made Available**

All documents intended to be used at the trial or hearing and which may be of assistance in achieving the purposes of a pre-trial conference, such as medical reports and reports of experts, shall be made available to the pre-trial judge.

**50.05 Costs of Pre-Trial Conference**

The pre-trial judge may make an order as to the costs of the pre-trial conference but, in the absence of such an order, the costs thereof shall be costs in the cause.

**50.06 Proviso**

Nothing in this rule shall prevent a judge before whom a proceeding has been called for trial or hearing from holding such a conference either before or during the trial or hearing without disqualifying himself from presiding at the trial or hearing provided, however, that, unless expressly consented to by all parties, there shall be no discussion as to,

- (a) the discharge of the jury;
- (b) the settlement of liability; or
- (c) the quantum of damages.

## NOTES

### **RULE 51 REQUEST FOR ADMISSION**

#### **51.01 Admission of Fact**

Any party to an action may, at least 20 days before the trial, serve on any adverse party a request for admission in writing of the truth of any relevant facts specified in the request.

#### **51.02 Effect of Request**

Within 10 days after service of the request, the party to whom the request is directed shall serve upon the party requesting the admission a written answer or objection thereto. If objection is made, the reasons therefor shall be stated.

#### **51.03 Effect of Admission**

(1) Any fact admitted under this rule is conclusively established unless the court permits withdrawal or amendment of the admission.

(2) The admission of any fact under this rule may be used only in the action in respect of which it is made.

#### **51.04 Effect of Refusal or Failure**

Where any party refuses or fails to admit any fact in compliance with a request under this rule, and such fact is subsequently proved at the trial, the trial judge shall take such refusal or failure into account in exercising his discretion as to costs.

NOTES**RULE 52 EXPERT WITNESS****52.01 Condition Precedent to Calling Expert Witness at Trial**

(1) Any party intending to call an expert witness at trial shall, not less than 10 days prior to the commencement of the trial, serve upon every other party to the action, a copy of a report, signed by the expert, setting out his name, address and qualifications and the substance of his proposed testimony.

(2) Unless paragraph (1) of this sub-rule has been complied with, no expert witness may testify without leave of the trial judge.

**52.02 Examination of Expert Witness Before Trial**

(1) Where, for any reason, it may be impractical or inconvenient for an expert witness to attend the trial of an action, the party intending to call that witness may, with leave of the court, or on the consent of all parties and at his own expense, examine that witness before the trial for the purpose of taking his evidence for use at the trial.

(2) Before applying to the court for leave to conduct an examination under this sub-rule, the applicant shall comply with the requirements of Rule 52.01.

(3) Unless otherwise ordered or provided by this rule, the procedure prescribed by Rule 33 shall apply to the examination of any witness under this sub-rule.

(4) On the examination of a witness under this sub-rule, he may be examined, cross-examined and re-examined in the same manner as a witness at trial.

(5) An order or consent for the examination of a witness under this sub-rule may provide that the examination be recorded by videotape or other similar means either in addition to or in substitution for a typewritten transcript.

NOTES

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52.03

Former section 52 of  
the Evidence Act

(6) Where the evidence has been transcribed, the party whose witness has been so examined shall serve every party who attended, or was represented on the examination, with a copy of the transcript, free of charge.

(7) A transcript or videotape or other similar recording of such evidence shall be admissible at the trial, unless the court otherwise orders, as the evidence of the expert witness so examined, saving all just exceptions, and may be tendered in evidence by any party to the action who attended, or was represented, on the examination.

(8) Where the evidence of an expert witness has been taken pursuant to the provisions of this sub-rule, he shall not be called to give evidence at the trial, except with leave of the trial judge, or where the trial judge has required his attendance at the trial.

## 52.03 Medical Expert

(1) Subject to compliance with Rule 52.01, a medical report prepared and signed by a medical or dental practitioner, licensed to practise in some part of Canada is, with leave of the court, admissible in evidence at trial, provided that at least 10 days notice of intention to introduce the report in evidence has been given to every other party.

(2) Where any such medical or dental practitioner has been required to attend and give oral evidence at or before trial and the court is of the opinion that his evidence could have been introduced as effectively by way of a medical report, the court may order the party who required the attendance of the medical or dental practitioner to pay the costs of his attendance.

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date set forth therein, is *prima facie* proof for any purpose to which the authority of the Legislature extends that the person so named died on that date, and also of the office, authority and signature of the person signing the certificate, without any proof of his appointment, authority or signature. R.S.O. 1960, c. I-25, s. 50.

Medical  
reportsNotice and  
productionReport  
requiredWhere  
doctor  
called  
unnec-  
essarily

**52.**—(1) Any medical report obtained by or prepared for a party to an action and signed by a legally qualified medical practitioner licensed to practise in any part of Canada is, with the leave of the court and after at least seven days notice has been given to all other parties, admissible in evidence in the action.

(2) Unless otherwise ordered by the court, a party to an action is entitled to obtain the production for inspection of any report of which notice has been given under subsection 1 within five days after giving notice to produce the report.

(3) Except by leave of the judge presiding at the trial, a legally qualified medical practitioner who has medically examined any party to the action shall not give evidence at the trial touching upon such examination unless a report thereof has been given to all other parties in accordance with subsection 1.

(4) Where a legally qualified medical practitioner has been required to give evidence *viva voce* in an action and the court is of opinion that the evidence could have been produced as effectively by way of a medical report, the court may order the party that required the attendance of the medical practitioner to pay as costs therefor such sum as it considers appropriate. 1968, c. 36, s. 2, amended

**RULE 53 TAKING EVIDENCE PRIOR TO TRIAL****53.01 Where Available**

(1) By order of the court, or by consent of the parties, a person may be examined on oath before trial for the purpose of having a deposition of his testimony available to tender as evidence at the trial.

(2) An order may be made under paragraph (1) where the court is satisfied that material evidence may be obtained from a person,

- (a) who may not be able to attend or testify at the trial by reason of illness, age or other infirmity;
- (b) whose attendance at the trial may not be compelled by reason of his absence from Ontario; or
- (c) who resides out of Ontario and it is impossible to procure his attendance or impractical to do so by reason of the expense involved.

**53.02 Procedure**

\*(1) Unless otherwise ordered or provided by this rule, the procedure prescribed by Rule 33 shall apply to the examination of any witness under this rule.

(2) On the examination of a witness under this rule, he may be examined, cross-examined and re-examined in the same manner as a witness at trial.

(3) An order or consent for the examination of a witness under this rule may provide that the examination be recorded by videotape or other similar means either in addition to or in substitution for a typewritten transcript.

**Rule 270**

270. The court may, in any cause or matter where it appears necessary for the purposes of justice, make an order for the examination upon oath before an officer of the court or any other person and at any place, of any person, and may permit such deposition to be given in evidence (Form 77). [See also Rule 276.—Ed.]

**Rule 276**

276.—(1) Where the testimony of a person or persons resident out of Ontario is required and for any reason an order under rule 270 is not sufficient, the court may order the issue of a commission to take such testimony (Order: Form 74; Commission: Form 61).

(2) Unless otherwise ordered or the parties otherwise agree, if the name of any person to be examined is not set out in the order, notice of such name shall be given by the party who intends to conduct such examination to the opposite party or to the agent named by him under subrule 1 of rule 279 five days before the time fixed therefor. [See also Rule 270.—Ed.]

**Rule 281**

281. The witnesses shall be examined on oath, affirmation or otherwise in accordance with the law of the country in which the commission is executed.

**\* Rule 277**

277. If a party for whose examination an order has been made or a commission has issued refuses to attend before the examiner or commissioner, judgment may pass against him.

**\* Rule 282**

282. Where a witness does not understand the English language, the commission shall be executed with the aid of an interpreter nominated by the commissioner and sworn to interpret truly the questions to be put to the witness and his answers thereto, and the examination shall be taken in English.

NOTES

53.03(1) (a)  
(2)  
(3)

Rule 278  
Rules 279; 280; 281  
Rule 287

## Rule 278

278. The notice of a motion for a commission to take evidence shall state the name and address of the commissioner proposed.

## Rule 279

279.—(1) Unless otherwise directed, the examination shall be upon oral questions to be reduced into writing and returned with the commission; and notice of the execution of the commission shall be given to the opposite party, if, within the time prescribed by the order, he gives the name and the address of a person resident within two miles of the place where the commission is to be executed, on whom such notice may be served.

(2) If no agent is named or the name or address given proves to be illusory or fictitious, or if the party so notified fails to attend pursuant to the notice, the commission may be executed ex parte.

## Rule 280

280. Where the examination is to take place upon written interrogatories, the interrogatories in chief shall be delivered to the opposite party eight days before the issue of the commission, and the cross-interrogatories shall be delivered to the opposite party within four days after the receipt of the interrogatories in chief, and in default of cross-interrogatories being so delivered, the commission may be executed without cross-interrogatories.

## Rule 281

281. The witnesses shall be examined on oath, affirmation or otherwise in accordance with the law of the country in which the commission is executed.

## Rule 287

287. Where the opposite party desires to join in the commission and examine witnesses on his own behalf thereunder, each party shall in the first instance pay the costs of the commission consequent upon the examination of his witnesses.



## Rule 286

286. The commission, interrogatories, depositions and any documents or certified copies thereof or extracts therefrom, referred to therein, shall be sent to the proper officer, on or before the day named in the order for the commission, enclosed in a cover under the seal of the commissioner; and the same or certified copies thereof may be given in evidence, saving all just exceptions, without any other proof of the absence from Ontario of the witness therein named than an affidavit of the solicitor or agent of the party as to his belief of such absence.

**53.03 Examination Out of Ontario**

(1) Where an order is made under this rule for the examination of a witness out of Ontario, the order shall provide for,

- (a) the issuance of a Commission (Form 53A) authorizing the taking of such evidence before the Commissioner therein named; and, if requested,
- (b) the issuance of a Letter of Request (Form 53B) directed to the appropriate authority in the jurisdiction in which the witness is to be found, requesting the issuance of such process as may be necessary to compel that witness, or any other witness who may be examined under this rule, to attend and submit to examination before the Commissioner.

(2) The examination of a witness out of Ontario shall take the form of oral questions and answers, unless some other form of examination is required by the order or by the law of the place where the examination is conducted.

(3) At the conclusion of the examination of a witness ordered to be examined under this rule, the Commissioner shall, on the consent of all parties, allow any other witness who is to be found in the same jurisdiction to be examined before him.

**\* 53.04 Use at Trial**

(1) A deposition taken under this rule shall be admissible at trial, unless the court otherwise orders, as the evidence of the witness so examined, saving all just exceptions, and may be tendered in evidence by any party to the action.

(2) Where the evidence of a witness has been taken pursuant to this rule, he shall not be called to give evidence at the trial, except with leave of the trial judge.

**NOTES**

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54.01 (2) (b)  
 (3)

**TRIALS****RULE 54 TRIAL PROCEDURE****54.01 Failure to Attend at Trial**

(1) Where an action is called for trial and all of the parties fail to attend, the trial judge may strike the action off the list.

(2) Where an action is called for trial and any party fails to attend, the trial judge may,

(a) proceed with the trial in the absence of that party;

(b) where the plaintiff attends and the defendant fails to attend, allow the plaintiff to prove his claim and dismiss the counterclaim, if any;

(c) where the defendant attends and the plaintiff fails to attend, dismiss the claim and allow the defendant to prove his counterclaim, if any; or

(d) make such other order as may seem just.

(3) Any judgment obtained against any party who failed to attend at the trial may be set aside by a judge on such terms as may seem just where the motion is brought without undue delay and the failure to attend is satisfactorily explained. Unless the failure to attend was through no fault of the applicant, he shall be required to satisfy the judge that there is a triable issue.

**54.02 Adjournment of Trial**

A judge may at any time postpone or adjourn a trial to such time and place, and upon such terms as may seem just.

**Rule 252  
 Rule 509**

**Rule 252**

252. If, when an action is called on for trial, the defendant appears and the plaintiff does not, the defendant is entitled to judgment dismissing the action, and, if he has a counter-claim, may prove such claim.

**Rule 509**

509. Where a party does not appear at the trial, the judgment may be set aside and a new trial ordered by the judge presiding at the sittings or by any other judge.

NOTES**54.03 Court Experts**

- (1) On the application of any party, a judge may, at any time, appoint one or more independent experts to inquire and report on any question of fact or opinion relevant to any issue in the action.
- (2) The court expert shall be named by the judge and, where possible, shall be an expert agreed upon by the parties.
- (3) The order shall contain the instructions to be given to the expert and the judge may, from time to time, make such further orders as he deems necessary to enable the court expert to carry out his instructions, including the examination of any party or property and the making of experiments and tests.
- (4) The judge may direct the court expert to make a further supplementary report.
- (5) A copy of the report of any expert appointed by the court shall be sent to each of the parties, and the original shall be filed as evidence at the trial of the action.
- (6) Any party may, at the trial, cross-examine the expert on his report.
- (7) Where a court expert is appointed, any party may call one expert to give evidence on any question of fact or opinion reported on by the court expert, but no party may call more than one such witness without leave of the court.
- (8) The remuneration of a court expert shall be fixed by the judge, and shall include a fee for his report and a proper sum for each day that he is required to attend at trial.
- (9) Where a court expert is appointed, the liability of the parties for the payment of his remuneration shall be determined by the judge.
- (10) Where an application by any party for the appointment of a court expert is opposed, the judge may, as a condition of making the appointment, require the party applying for the appointment to give such security for the remuneration of the court expert as may seem just.

**Rule 267****Rule 267**

267.—(1) The court may obtain the assistance of merchants, engineers, accountants, actuaries, or scientific persons, in such way as it thinks fit, the better to enable it to determine any matter of fact in question in any cause or proceeding, and may act on the certificate of such persons.

(2) The court may fix the remuneration of any such person and direct payment thereof by any of the parties.

(3) (Revoked, O. Reg. 307/72, s. 2.)

NOTES

54.04

Rules 262; 263

**54.04 Exhibits**

(1) Exhibits shall be marked and numbered consecutively, and the registrar attending the trial shall make a list of the exhibits, giving a description of each exhibit, and stating by whom it was put in evidence and, where the person from whose possession it came is other than a party, the name and identity of that person.

(2) At any time following the trial judgment, any party may apply to the registrar for delivery of all or any of the exhibits upon filing the consent of all parties represented at the trial.

(3) Subject to the preceding paragraph, the exhibits shall remain in the custody or control of the registrar,

(a) until the time for taking an appeal to the Court of Appeal has expired; or

(b) where an appeal is taken to the Court of Appeal and has been disposed of, until the time for taking an appeal to the Supreme Court of Canada has expired; or

(c) where an appeal is taken to the Supreme Court of Canada, until it is disposed of.

(4) Upon the expiration of the time for appeal or on the disposition of the appeal, the registrar shall, unless otherwise ordered, return the exhibits to the respective solicitors or record for the parties who put the exhibits in evidence at the trial and those solicitors shall return the exhibits to the persons from whose possession they came.

**Rule 262**

262.—(1) Exhibits shall be marked and numbered in accordance with Form 136, and the registrar attending the trial shall, at the conclusion thereof, make a list of the exhibits, giving a description of each exhibit, and stating by whom it was put in (Form 137). The exhibits of each party shall be classified separately in such list.

(2) The exhibits shall remain in court until judgment is given and during any stay of proceedings, and thereafter shall be delivered out, without order, upon the application of either party upon notice to the other, unless an appeal is taken, when the exhibits shall be retained until the appeal is disposed of.

**Rule 263**

263. Where exhibits have not been applied for within two years from the date of the trial, the officer in whose custody they are may notify the solicitors for the parties that unless they are applied for in three months they will be destroyed, and, unless such exhibits are applied for within that period, he may by leave of a judge destroy them.

NOTES

54.05  
54.06

Rules 265; 266  
Rule 253

**TRIAL PROCEDURE****KULE 54****54.05 View by Judge or Jury**

The judge, or the judge and jury, by whom any action is being tried, or the court before whom any appeal is being heard, may, in the presence of the parties or their counsel, inspect any real or personal property concerning which any question arises in the action, or the place where the cause of action arose, where such a view may facilitate the understanding of the evidence.

**54.06 Exclusion of Witnesses**

(1) Subject to paragraph (2), the trial judge may, and at the request of any party shall, exclude any witness from the courtroom until called to give evidence.

(2) An order excluding witnesses from the courtroom shall not apply to a party to the action or to any witness whose presence is essential to instruct counsel for the party calling him, but the trial judge may require any such party or witness to give his evidence before any other witnesses are called to give evidence on behalf of that party.

(3) Where an order is made excluding a witness from the courtroom, he shall not have any communication with any witness who has testified during his absence from the courtroom until after the witness so excluded has been called and has given his evidence.

(4) Nothing in this sub-rule shall preclude the trial judge from excluding any person from the courtroom who is interfering with the proper conduct of the trial or who is otherwise improperly conducting himself.

**Rule 265**

265. The judge by whom any cause or matter is tried with or without a jury, and the court before which any cause or matter is brought by way of appeal, may inspect any property or thing concerning which any question arises therein, and where the sanity of a party is in question, may examine him for the purpose of determining his sanity.

**Rule 266**

266. A view by the jury may be ordered by the judge presiding at the trial.

**Rule 253**

253. The judge at the trial may,

- (a) order a witness, whether or not a party, to be excluded from the court until called to give evidence;
- (b) require a party to be examined before the other witnesses on his behalf; and
- (c) exclude the testimony of any person who does not conform with an order made under clause (a) or clause (b) of this rule.

**NOTES****54.07 Order of Presentation**

(1) On the trial of an action with a jury, the order of presentation, unless otherwise directed by the trial judge, shall be regulated as follows:

- (a) The plaintiff shall be allowed to make his opening address first and, subject to clause (b), immediately thereafter adduce whatever evidence he may wish to call;
- (b) Where the defendant so request, he may, by leave of the trial judge, make his opening address immediately after the opening address of the plaintiff, and before the plaintiff adduces any evidence;
- (c) When the evidence adduced on behalf of the plaintiff is concluded, the defendant may make his opening address, unless he has already done so, and then proceed to adduce whatever evidence he may wish to call;
- (d) When the evidence adduced on behalf of the defendant is concluded, the plaintiff may proceed to adduce whatever evidence he may properly call in reply and, at the conclusion thereof, the defendant shall make his closing address followed by the closing address of the plaintiff;
- (e) Where the defendant calls no evidence at the conclusion of the evidence adduced on behalf of the plaintiff, the plaintiff shall make his closing address followed by the closing address of the defendant.

(2) Where the burden of proof in respect of all matters in issue in the action lies on the defendant, the trial judge may reverse the order of presentation.

(3) Where there are two or more defendants separately represented, the order of presentation shall be as directed by the trial judge.

(4) Where a party is represented by counsel, the right to address the jury shall be exercised by his counsel.

**Rule 255**

255.—(1) At the trial, the addresses to the jury shall be regulated as follows:

1. At the conclusion of the case of the party who begins, if the opposite party states his intention to be not to adduce evidence, and he has not adduced evidence, the party who begins has the right to address the jury for the purpose of summing up the evidence, and the opposite party has the right to reply.
2. If the opposite party does not state his intention to be not to adduce evidence, or if he has adduced evidence, he has the right to open his case, and (after the conclusion of such opening) to adduce such evidence as he thinks fit, and when all the evidence is concluded, to sum up the evidence, and the party who begins has the right to reply.

(2) Where a defendant claims a remedy over against a co-defendant, he has the right to address the jury after the co-defendant.

(3) Where a party is represented by counsel, the right conferred by this rule shall be exercised by his counsel.

NOTES

54.08 (1) (a)  
 (b)  
 (2)  
 54.09

Rule 511(2)  
 Rule 510  
 Rule 511(1)  
 Rule 256

**TRIAL PROCEDURE**      **RULE 54**

**54.08 Disagreement of the Jury**

(1) Where the jury disagrees, or makes no finding upon which judgment can be granted, the trial judge may,

- (a) on the application of the defendant, dismiss the action on the ground that there is no evidence to warrant a judgment for the plaintiff, or that for any other reason he is not entitled to judgment; or
- (b) direct that the action be re-tried at the same sittings by a jury selected from a new panel or at any subsequent sittings.

(2) Where a jury is directed to answer questions, and answers some but not all, or where the answers are conflicting so that judgment cannot be granted upon such findings, the action shall be re-tried as in the case of a disagreement.

**54.09 Omission to Prove a Fact or Document**

Where through accident or mistake or other cause, any party omits or fails to prove some fact or document material to his case,

- (a) the judge may proceed with the trial subject to the fact or document being afterwards proved at such time and upon such terms as he may direct; or
- (b) where the case is being tried by a jury, the judge may direct the jury to find a verdict as if the fact or document had been proved, and the verdict shall take effect on the fact or document being afterwards proved as directed, and, if not so proved, judgment shall be granted to the opposite party, unless the judge otherwise directs.

**Rule 511**

511.—(1) Where a jury is directed to answer questions and answers some but not all, or where the answers are conflicting so that judgment cannot be entered upon such findings, the action shall be re-tried as in the case of a disagreement.

(2) If the answers entitle either party to judgment as to some but not all the causes of the action, the judge may direct judgment to be entered on the causes of action as to which the answers are sufficient, and the issues upon the remaining causes of action shall then be re-tried as upon a disagreement.

**Rule 510**

510. Where the jury disagrees, the action may be re-tried at the same sittings or at any subsequent sittings as may be directed.

**Rule 256**

256.—(1) Where, through accident or mistake or other cause, a party omits or fails to prove some fact material to his case, the judge may proceed with the trial, subject to such fact being afterwards proved at such time as the judge directs, and, if the case is being tried by a jury, the judge may direct the jury to find a verdict as if such fact had been proved, and the verdict shall take effect on such fact being afterwards proved as directed, and, if not so proved, judgment shall be entered for the opposite party, unless the judge otherwise directs.

(2) Subrule 1 does not apply to an action for defamation.

**TRIAL PROCEDURE**

**RULE 54**

**Rule 259**

259. Damages in respect of any continuing cause of action shall be assessed down to the time of the assessment.

**54.10 Assessment of Damages**

Where damages are to be assessed in respect of,

- (a) any continuing cause of action;
- (b) repeated breaches of recurring obligations; or
- (c) intermittent breaches of a continuing obligation,

the damages shall be assessed down to the time of assessment, including damages for breaches occurring after the commencement of the proceeding.

LUV  
NOTES

55.01(1)  
(2)  
55.02(1)

RULE 55 EVIDENCE AT TRIAL  
TRIALS

55.01 Evidence by Witnesses

(1) Unless otherwise provided by these rules, witnesses at the trial of an action may be orally examined, cross-examined and re-examined under oath.

(2) The trial judge shall exercise reasonable control over the mode of interrogation of a witness so as to protect the witness from undue harassment or embarrassment and may disallow any question put to a witness that is vexatious or irrelevant to any matter which may properly be inquired into at the trial.

(3) The trial judge may at any time direct that a witness be recalled for further examination.

(4) Where a witness appears to be evasive, the trial judge may permit the party calling that witness to examine him by means of leading questions relevant to the matters in issue.

(5) Where a witness does not understand the language in which the trial is being conducted, or is a deaf or mute person, it shall be the responsibility of the party calling that witness to provide a competent interpreter who, before the witness is sworn or examined, shall be sworn to accurately interpret the administration of the oath, the questions to be put to the witness and his answers thereto.

55.02 Evidence by Affidavit

(1) Before or at the trial of an action, the court may make an order, upon such terms as may seem just, allowing the evidence of any witness to be given by affidavit or any particular fact or document to be proved by affidavit, unless an adverse party requires the attendance of the deponent at trial for cross-examination.

(3) At the trial of an undefended action, the evidence by or on behalf of the plaintiff may be given by affidavit unless, in any particular case, the trial judge requires the plaintiff to call oral evidence.

(2) Where an order is made under paragraph (1) prior to the trial, it may be revoked or varied by the trial judge where it appears necessary to do so in the interests of justice.

Rule 268  
Rule 254  
Rule 268

Rule 268

268. The witnesses at the trial of an action or an assessment of damages shall be examined *viva voce* and in open court, but a judge may at any time, for sufficient reason, order that any particular fact or facts may be proved by affidavit, or that the affidavit of a witness may be read at the trial, on such conditions as he deems just, or that a witness whose attendance ought for some sufficient cause to be dispensed with, be examined before an examiner; but where the other party bona fide desires the production of a witness for cross-examination and such witness can be produced, an order shall not be made authorizing his evidence to be given by affidavit.

Rule 254

264. The judge may in any case disallow any question put to a witness that appears to the judge to be vexatious and not relevant to any matter proper to be enquired into at the trial.

**NOTES**

55.03(1)  
 (2)  
 (3)  
 (5)

Rule 272  
 Rule 272  
 Rule 273  
 Rule 275(2)

**55.03 Compelling Attendance at Trial**

(1) Where a party requires the attendance of any person in Ontario as a witness at trial, he may serve him with a Summons to Witness (Form 55A) requiring him to attend the trial at the time and place stated therein, and any such summons may also require him to produce at the trial all documents in his possession, custody or control relating to the matters in question in the action or such documents relating thereto as may be particularly specified therein.

(2) On the request of any party, or his solicitor, and on payment of the prescribed fee, a registrar shall issue a Summons to Witness signed by him under the seal of the court and that party or his solicitor shall complete the summons as the circumstances may require and may insert therein the names of any number of witnesses.

(3) No Summons to Witness for the production of an original record or document that may be proved by a certified copy shall be served without leave of the court.

(4) A Summons to Witness shall be served by leaving a copy thereof with the witness personally and, unless he is a party, at the same time paying or tendering to him the proper conduct money, and it shall not be necessary for the process server to produce the original or have it in his possession.

(5) Service of a Summons to Witness and the payment or tender of any conduct money may be proved by affidavit.

**Rule 272**

272. A subpoena may be issued from any office of the court at any time in blank and may be completed by the solicitor or party, and any number of names may be inserted in one subpoena (Form 57). [Amended. O. Reg. 990/76, s. 4.]

**Rule 273**

273.—(1) No subpoena for the production of an original record, or of an original document from any registry office, shall be issued, but an order for its production or transmission may be made which shall be obeyed by the officer in whose custody it is.

(2) Except in special circumstances requiring or justifying the production of the original, no such order shall be made where the document may be proved by a certified copy and any officer required to produce a document is entitled to be paid ordinary witness fees.

(2) The service of the subpoena and payment of conduct money may be proved by an affidavit.

## NOTES

(7)  
55.04Rule 275(1)  
Rule 232

## RULE 55.03 CONTINUED

(6) A Summons to Witness continues to have effect until the conclusion of the sittings for which the attendance of the witness is required.

(7) Where a witness fails to attend at the trial of an action or to remain in attendance in accordance with the requirements of a Summons to Witness duly served upon him, and the presence of that witness is material to the ends of justice, the presiding judge may, by his Warrant (Form 55B) directed to all sheriffs and other peace officers in the Province of Ontario, cause such witness to be apprehended anywhere within Ontario and forthwith brought before the court. Upon being so apprehended, he may be detained in custody until his presence as such witness is no longer required, or released on such terms as the court may order, and he may be ordered to pay the costs arising out of his failure to attend or remain in attendance.

## 55.04 Compelling Attendance of Witness in Custody

The court may order the issue of a Writ of *Habeas Corpus Ad Testificandum* (Form 55C), directing the sheriff, jailer or other officer having the custody of a prisoner, to produce him for any examination authorized by these rules or as a witness at a trial.

## Rule 275

275.—(1) Upon proof to the satisfaction of the presiding judge of the service of a subpoena upon a witness who fails to attend or to remain in attendance in accordance with the requirements of the subpoena, and the amount proper for conduct money has been duly paid or tendered to him, and that the presence of such witness is material in the ends of justice, the judge may by his warrant (Form 60), directed to any sheriff or other officer of the court, or to any constable, cause such witness to be apprehended anywhere within Ontario, and forthwith to be brought before the court and to be detained in custody as the presiding judge may order, until his presence as such witness is no longer required, or, in the discretion of the judge, to be released on a recognizance (with or without sureties) conditioned for appearance to give evidence. [Amended, O. Reg. 106/75, s. 24.]

## Rule 232

232. The court may order the issue of a writ of *habeas corpus ad testificandum* to issue directly to the sheriff, jailer or other officer having the custody of a prisoner, to produce him for any examination authorized by these rules or as a witness at a trial (Form 59).

NOTES**55.05 Calling Adverse Party as a Witness**

(1) A party intending to call as a witness at the trial an adverse party, or any officer or director of a corporation that is an adverse party, may either serve him with a Summons to Witness or serve on the adverse party or his solicitor, at least 10 days before trial, notice of his intention to call him as a witness.

(2) A party may call as a witness an adverse party, or any officer or director of a corporation that is an adverse party, in attendance at the trial, unless the adverse party has already testified on his own behalf, or undertakes to do so, or, where the adverse party is a corporation, the officer or director has already testified, or counsel for the corporation undertakes to call him as a witness.

(3) A party calling an adverse party, or any officer or director of a corporation that is an adverse party, as a witness, may cross-examine him.

(4) If a person required to testify pursuant to this sub-rule refuses or neglects to attend at the trial or to remain in attendance at the trial or refuses to be sworn or to answer any proper question put to him or to produce any document which he is required to produce, the court may pronounce judgment in favour of the party calling that witness, adjourn the trial, or make such other order as may seem just.

**Rule 274**

274. A party who desires to call as a witness at the trial an opposite party who is within the jurisdiction may either subpoena him or give him or his solicitor at least five days' notice of the intention to examine him as a witness in the cause, paying at the same time the amount proper for conduct money, and, if such opposite party does not attend on such notice or subpoena, judgment may be pronounced against him or the trial of the action may be postponed.

NOTES

## REFERENCES

## RULE 56 DIRECTING A REFERENCE

## 56.01 Where a Reference May be Directed

Subject to any right to have any issue tried with a jury, a judge may, at any time,

- (a) direct a reference to determine any question or issue arising in a proceeding, or refer the whole proceeding for trial where,
  - (i) all parties, who are not under disability, consent;
  - (ii) a prolonged examination of documents or a scientific or local investigation is required that, in the opinion of the judge, cannot conveniently be made by the trial judge or a jury; or
  - (iii) a substantial issue in dispute requires the taking of an account;
- (b) direct a reference for the taking of any accounts or the making of any inquiries in connection with the conduct of a sale, the appointment of a committee, guardian or receiver, or the enforcement of any judgment.

## Section 71

71.—(1) Subject to the rules and to a right to have particular cases tried by a jury, a judge of the High Court may refer a question arising in an action for inquiry and report either to an official referee or to a special referee agreed upon by the parties.

(2) Subsection 1 does not, unless with the consent of the Crown, authorize the reference to an official referee of an action to which the Crown is a party or of a question or issue therein. R.S.O. 1960, c. 197, s. 68.

## Section 72

## 72. In an action,

- (a) if all the parties interested who are not under disability consent, and, where there are parties under disability, the judge is of opinion that the reference should be made and the other parties interested consent; or
- (b) where a prolonged examination of documents or a scientific or local investigation is required that cannot, in the opinion of a court or a judge, conveniently be made before a jury or conducted by the court directly; or
- (c) where the question in dispute consists wholly or partly of matters of account, a judge of the High Court may at any time refer the whole action or any question or issue of fact arising therein or question of account either to an official referee or to a special referee agreed upon by the parties. R.S.O. 1960, c. 197, s. 69.

56.02(2)  
56.04

Rule 771(1)  
Rule 402(4)

## NOTES

### 56.02 To Whom Reference May be Directed

(1) In a Supreme Court proceeding, a reference may be directed to a local judge, a master, a local master or to a referee agreed upon by the parties.

(2) In a county court proceeding, a reference may be directed to the local master, to the clerk of the court or to a referee agreed upon by the parties. Where the judge directing the reference is a local master, the reference may be directed to himself.

\* (3) Where a reference is directed to a referee, he shall be deemed to be, for the purposes of the reference, an officer of the court directing the reference.

(4) The judge directing any reference to a referee shall determine his remuneration and the liability of the parties for the payment thereof.

### 56.03 Judgment or Order of Reference

In addition to defining the nature and subject matter of the reference, the judgment or order of reference may contain directions as to the conduct of the reference and may designate which party is to have carriage of the reference.

### 56.04 Motions on a Reference

Any person to whom a reference has been directed shall hear and dispose of any motion made in connection with the reference, provided, however, that in his absence or with his consent such a motion may be heard and disposed of by any judge, local judge, master or local master of the court in which the reference was directed.

### Rule 771

771.—(1) In actions in the county court, the clerk shall, subject to the directions of the judge, discharge all the duties and have all the powers of the Registrar of the Supreme Court and shall act as referee in any mortgage reference directed by a preceipe or default judgment and in the taking of any accounts that may be referred to him by the judge.

### Rule 402

402.—(1) In the event of the referee declining to act, a judge may appoint a new referee.

(2) Where a master or referee has ceased to hold office or become incapacitated prior to settling his report, an application may be made to the Chief Justice of the High Court for directions, whereupon rule #1 applies mutatis mutandis.

(3) Where a master or referee has ceased to hold office or become incapacitated after settling but prior to signing his report, any officer having jurisdiction to make such a report may sign the report.

(4) In the absence, or with the consent, of a master or referee who has entered upon the hearing of a reference, any interlocutory application in the reference may be made to any other master or referee and that other master or referee may deal with the application and make any order thereon which could have been made by the first-mentioned master or referee.

### \* Rule 436

436. Every master has the same power, authority and jurisdiction as the Master at Toronto when sitting in chambers with respect to all matters referred to him or which arise in his office.

## NOTES

56.06 (1)

Rule 512

**56.05 Report on Reference**

Any person to whom a reference has been directed shall make his findings and embody his conclusion in the form of a report.

**56.06 Confirmation of Report**

(1) A report shall have no effect until it has been confirmed.

(2) Where a judgment or order directing a reference does not require the person to whom the reference is directed to report back to the judge directing the reference or to a judge of that court, the report shall be deemed to be confirmed upon the expiration of 15 days after a copy of the report, with proof of service thereof on every party who appeared on the reference, has been filed in the office in which the proceeding was commenced unless a notice of appeal is served within that time.

(3) Where the judgment or order directing a reference requires the person to whom the reference is directed to report back to the judge directing the reference or to a judge of that court, the report may only be confirmed on a motion for judgment and there shall be no right of appeal from the report itself, but an appeal may be taken from the disposition of the motion for judgment.

**Rule 512**

512.—(1) Every report or certificate of a master shall be filed and shall be deemed to be confirmed at the expiration of fifteen days from the date of service of notice of filing the same, unless notice of appeal is served within that time.

(2) Where notice of filing is not necessary, a report shall be confirmed fifteen days after filing. (Amended, O. Reg. 115/72, s. 11.)

NOTES**56.07 Appeal from Report**

(1) Where the whole proceeding has been referred for trial or hearing, an appeal from the report shall be to the Divisional Court.

(2) In every other case where there is a right of appeal from a report, the appeal shall be,

(a) to a judge of the High Court, where the proceeding is in the Supreme Court; or

(b) where the proceeding is in a county court, to a judge of that court, unless the reference was directed to a judge of that court as local master in which case the appeal shall be to a judge of the High Court.

(3) An appeal from a report shall be on notice setting out the grounds of appeal, served within 15 days after a copy of the report, with proof of service thereof on every party who appeared on the reference, has been filed in the office in which the proceeding was commenced.

(4) Except as provided in paragraph (3), where the appeal is to the Divisional Court, the applicable provisions of Rule 62 shall apply as if the appeal was from a judgment.

(5) Where the appeal is to a judge of the High Court it shall be made returnable within 30 days after the filing of the report and the provisions of Rule 63.02 shall apply as if the appeal was from an interlocutory judgment or order.

**Rule 513**

513. An appeal from the report or certificate of a master or referee shall be to the court upon seven clear days' notice, and is returnable within one month from the date of service of notice of filing of the report or certificate.

57.01 (a)  
 (b)  
 (c)

Rule 425  
 Rule 413 (f) (g)  
 Rules 403; 771(1)

## REFERENCES

## RULE 57 PROCEDURE ON A REFERENCE

## 57.01 Conduct of Reference

Any person to whom a reference has been directed shall,

(a) subject to any directions contained in the judgment or order of reference, conduct the reference in the least expensive and most expeditious manner and, to that end, he shall give such directions as may seem necessary and he may dispense with any proceeding ordinarily taken which he considers to be unnecessary or adopt a procedure different from that ordinarily taken;

\* (b) report any special circumstances and shall generally inquire into, decide and report on all matters relating thereto, as fully as if they had been specifically referred to him; and

# (c) conduct the reference, as nearly as may be, in accordance with the practice and procedure on a reference before a master, and for that purpose, he shall have the same power and authority as a master.

## Rule 425

425. In giving directions and in regulating the manner of proceeding before him, the Master shall devise and adopt the simplest, most speedy and least expensive method of prosecuting the reference, and with that view may dispense with any proceeding ordinarily taken which he conceives to be unnecessary or substitute a different course of proceeding for that ordinarily taken.

## Rule 413

(f) to report special circumstances;  
 (g) and generally, in taking the accounts, to inquire, adjudge and report as to all matters relating thereto, as fully as if they had been specifically referred.

## Rule 403

403. The practice and procedure on a reference to a referee shall be the same, as nearly as may be, as the practice and procedure in the Master's office.

## Rule 771

771.—(1) In actions in the county court, the clerk shall, subject to the directions of the judge, discharge all the dutes and have all the powers of the Registrar of the Supreme Court and shall act as referee in any mortgage reference directed by a praecipe or default judgment and in the taking of any accounts that may be referred to him by the judge.

## Rule 413

413. Under an order of reference the Master has power,  
 (d) to take into account necessary repairs, and lasting improvements, and costs and other expenses properly incurred otherwise, or claimed to be so;

## Rule 436

436. Every master has the same power, authority and jurisdiction as the Master at Toronto when sitting in chambers with respect to all matters referred to him or which arise in his office.

NOTES

57.02(1)  
(2)  
(3)  
(4)  
(5)

Rule 405  
Rule 412  
Rule 412  
Rules 87; 406  
Rule 407

209

57.02 Practice and Procedure on a Reference before a Master

(1) The party having carriage of the reference shall forthwith proceed to take out the judgment or order of reference and, within 10 days thereafter, apply to the master for an appointment to consider the reference and, in default thereof, any other party having an interest in the reference may assume carriage of the reference.

(2) On the return of the appointment, the master shall give such directions for the conduct of the reference as may seem just including,

- (a) the time and place at which the reference is to proceed;
- (b) any special directions as to the parties who are to attend; and
- (c) any special directions as to how the evidence is to be received.

(3) Any such directions may be varied or supplemented during the course of the reference as to the master may seem just.

(4) Unless otherwise directed by a master or required by these rules, at least 5 days notice of the reference, together with a copy of the judgment or order of reference, shall be served upon every other party to the action.

(5) Where it appears to the master that any person ought to be added as a party to the action, the master may make an order adding him as a party defendant and direct that a copy of such order, together with a copy of the judgment or order of reference and a Notice to an Added Party (Form 57A) be served on such person, who thereupon shall be treated and named as a party to the action and shall be bound as if he had been an original party thereto.

Rule 405

405. Every order of reference shall be brought into the Master's office within ten days after it is issued by the party having the carriage of it, and, in default, any other party having an interest in the reference may assume the carriage of the order.

Rule 412

412. The Master shall, unless he dispenses with it, in the first instance issue an appointment to consider, and, upon the return of the appointment, he shall fix a time at which to proceed with the reference and shall give any special directions he thinks fit, as to,

- (a) the parties who are to attend on the several accounts and inquiries;
- (b) the time when each proceeding is to be taken;
- (c) the mode in which any accounts referred to him are to be taken or valued;
- (d) the evidence to be adduced in support thereof;
- (e) the manner in which each of the accounts and inquiries is to be prosecuted,

and any such directions may be afterwards varied or added to, as are found necessary.

Rule 87

87. Where a reference is directed, the persons who, but for rules 80 to 85, would have been necessary parties shall be served with an office copy of the judgment (unless the court or Master dispenses with such service) endorsed with a notice according to Form 43, and after such service they are bound by the proceedings in the same manner as if they had been originally made parties; and, upon notice to the plaintiff, they may at their own risk as to costs require notice to be given them to enable them to attend the proceedings under the judgment, and any person so served may apply to the court to add to, vary or set aside the judgment within ten days from the date of such service.

Rule 406

406. Unless otherwise directed by the Master, and subject to rules 477 and 478, notice of the reference before him shall be given to every party affected by or interested in the inquiry though any such party may not have appeared in the action, but, in the absence of special direction, when default in appearance is made to such notice, no further notice need be given unless the party in default files a written request for notice with an address for service.

Rule 407

407. Where in proceedings before the Master it appears to him that a person not already a party ought to be made a party and ought to be at liberty to attend the proceedings before him, he may make an order adding him as a party defendant and direct a copy of the order, endorsed with a notice (Form 44), and a copy of the judgment or order of reference endorsed with a notice in accordance with Form 43, to be served upon such person, who thereupon shall be treated and named as a party to the action and shall be bound as if he had been originally made a party.

(6)  
 (8)  
 (9)  
 (10)  
 57.02 (11)  
 (12)

Rule 408  
 Rule 409  
 Rule 424  
 Rule 411  
 Rule 410  
 Rule 414

## RULE 57.02 CONTINUED

(6) A person so served may apply to a judge at any time within 10 days from the date of such service to discharge, add to, vary or set aside the judgment or order of reference or the order adding him as a party.

(7) The master may grant leave to make any necessary amendments to the pleadings which are not inconsistent with the judgment or order of reference as may seem just.

(8) Where it appears to the master that two or more parties have substantially similar interests, he may require such parties to be represented by the same solicitor; and, where those parties cannot agree upon the choice of a solicitor to represent them, the master may designate a solicitor for that purpose upon such terms as may seem just.

(9) The master shall keep in his office a Procedure Book in which he shall note all proceedings taken before him and all directions given by him in respect of the reference, and such directions need not be embodied in a formal order to bind the parties attending on the reference.

(10) Where a reference cannot be completed in one day, it shall be adjourned to the following day, if possible. Where this is not possible, the master shall note the adjournment in his Procedure Book, together with the reason therefor and shall, if possible, fix the time when it is to be resumed.

(11) Where the party having carriage of the reference does not proceed with reasonable diligence, the master may, upon the motion of any other interested party, transfer to him the carriage of the reference.

(12) The master may require any party to be examined and to produce such documents as he thinks fit and may give directions for their inspection by any other party.

### Rule 408

408. A person so served may apply to the court at any time within ten days from the date of such service to discharge, add to, vary or set aside the order of reference or the order adding him as a party.

### Rule 409

409. Where at any time during a reference it appears to the Master that the interests of the parties can be classified, he may require the parties constituting each or any class to be represented by the same solicitor and, where the parties constituting such class cannot agree upon the solicitor to represent them, the Master may nominate him.

### Rule 424

424. The Master shall keep in his office a book in which he shall enter proceedings taken before him and the directions that he gives in relation to the prosecution of the reference, or otherwise, and it is not necessary to issue or serve any formal order or document embodying such directions to bind the parties attending the reference.

### Rule 411

411. A reference shall be proceeded with as far as possible de die in diem, and, when an adjournment is ordered, the Master shall note in his book the reason thereof and shall when practicable fix the time when it is to be resumed so as to avoid the service of a new appointment.

### Rule 410

410. Where a party prosecuting a reference does not proceed with due diligence, the Master may upon the application of any other person interested commit to him the prosecution of the reference.

### Rule 414

414. The Master may cause parties to be examined, and to produce books, papers and writings, as he thinks fit, and may determine what books, papers and writings are to be produced, and when and how long they are to be left in his office, or, in case he does not deem it necessary that such books, papers or writings be left or deposited in his office, he may give directions for their inspection by the parties requiring them at such time and in such manner as he deems expedient.

(14)  
 (18)  
 (19)

Rule 435  
 Rule 430  
 Rule 431

## NOTES

### RULE 57.02 CONTINUED

(13) When the hearing of the reference is completed, the master shall fix a day to settle his report and notice thereof shall be served upon all parties who have appeared upon the reference unless such notice is dispensed with.

(14) In a proceeding for the administration of the estate of a deceased person, the report shall, as far as possible, be according to Form 57B.

(15) Where the master has made a ruling with respect to the admissibility of evidence or otherwise during the course of the reference he shall, on the request of any party, set out in his report his ruling and the reasons therefor.

(16) Any ruling made by the master on a reference shall not be subject to appeal during the course of the reference, except by leave of the master. Where such leave is granted, the master shall set out his ruling in an interim report.

(17) The party having carriage of the reference shall prepare a draft report and present it to the master to settle on the day fixed therefor.

(18) When the report is settled and signed by the master, the party having carriage of the reference shall forthwith serve a copy thereof on all parties appearing on the reference and file a copy thereof with proof of such service.

(19) While a reference is pending before the master, all documents relating thereto shall be filed with the master and, upon completion of the reference, such documents shall be sent to the office in which the action was commenced for filing in the court file.

#### Rule 435

435. In administration suits, reports shall, as far as possible, be according to Form 64.

#### Rule 430

430. As soon as the Master's report is settled and signed, it shall be delivered to the party prosecuting the reference, or, in case he declines to take it, then, in the discretion of the Master, to any other party applying therefor.

#### Rule 431

431. Pending a reference to a master, all affidavits, papers and documents relating thereto required to be filed shall be filed with the Master, but every report or certificate of a master shall be filed in the office in which the proceedings were commenced, and, upon the completion of the reference, the papers shall be transferred to the office in which the proceedings were commenced.

NOTES

## 57.03 Taking of Accounts

\*(1) On the taking of accounts, the master may,

- (a) take account of money, rents and profits received or which, but for wilful neglect or default, might have been received;
- (b) make allowance for occupation rent, and determine the amount thereof;
- (c) take into account necessary repairs, lasting improvements, costs and other expenses properly incurred; and
- (d) make all just allowances.

(2) Where an account is to be taken, the accounting party, unless the master otherwise directs, shall prepare the account in debit and credit form, verified by affidavit, and the items on each side of the account shall be numbered consecutively, and the account shall be referred to in the affidavit as an exhibit and shall not be annexed thereto.

(3) The master may direct that the books of account in which the amounts required to be taken have been kept, or any of them, be taken as *prima facie* evidence of the truth of the matters therein contained.

(4) Before proceeding to the hearing of a reference, the master may appoint a day for the purpose of taking the accounts and may direct the production and inspection of vouchers and, if deemed proper, cross-examination of the accounting party on his affidavit with a view to ascertaining what is admitted and what is contested between the parties.

(5) Where any party questions an account he shall give to the accounting party particulars of his objection thereto with specific reference to the item in question by number, and the master may require him to give further particulars of any such objection.

57.03(1)  
 (2)  
 (3)  
 (4)  
 (5)

Rule 413(a) to (c)  
 Rule 420  
 Rule 421  
 Rule 422  
 Rule 423

## Rule 413

413. Under an order of reference the Master has power,

- (a) to take the accounts with rents or otherwise;
- (b) to take account of money, rents and profits received or which, but for wilful neglect or default, might have been received;
- (c) to set occupation rent;
- (d) to take into account necessary repairs, and lasting improvements, costs and other expenses properly incurred otherwise, or claimed to be so;
- (\* e) to make all just allowances;
- (f) to report special circumstances;
- (g) and generally, in taking the accounts, to inquire, adjudge and report as to all matters relating thereto, as fully as if they had been specifically referred.

## Rule 420

420. Where an account is to be taken, the accounting party, unless the Master otherwise directs, shall bring in the account in debit and credit form, verified by affidavit, and the items on each side of the account shall be numbered consecutively, and the account shall be referred to by the affidavit as an exhibit, and shall not be annexed thereto.

## Rule 421

421. The Master may direct that in taking accounts the books of account in which the accounts required to be taken have been kept, or any of them, be taken as *prima facie* evidence of the truth of the matters therein contained.

## Rule 422

422. Before proceeding to the hearing and determining of a reference, the Master may appoint a day for the purpose of entering into the accounts and inquiries, and may direct the production and inspection of vouchers, and, if deemed proper, the cross-examination of the accounting party on his affidavit, with a view to ascertaining what is admitted and what is contested between the parties.

## Rule 423

423. A party seeking to charge an accounting party beyond what he has in his account admitted to have received shall give notice thereof to the accounting party, stating as far as he is able the amount sought to be charged and the particulars thereof in a short and succinct manner, and the Master may direct any party who seeks to falsify an account to deliver item by number.

NOTES

57.04 (1)  
 (2)  
 (3)  
 (4)  
 57.05

Rule 415  
 Rule 415  
 Rules 416; 417; 418  
 Rule 416  
 Rule 419

**57.04 Making of Inquiries**

(1) The master may cause advertisements for creditors or for heirs or next-of-kin, or other unascertained persons, and for the representatives of such as are deceased, to be published.

(2) In any such advertisement, the master shall appoint a time and place for filing the claims of any such persons and the advertisement shall notify them that, unless their claims are so filed, they will be excluded from the benefit of the order.

(3) Before the day appointed by the master to consider the claims filed pursuant to any such advertisement, the executor, administrator or trustee, or such other person as the master directs, shall examine such claims and file an affidavit verifying a list of the claims sent in pursuant to the advertisement and stating which of them he believes should be disallowed and the reasons for such belief.

(4) If any claim is contested, the master shall require Notice of Contestation (Form 57C) to be served upon the claimant fixing a day for adjudication upon the claim.

**57.05 Execution or Delivery of Deed or Conveyance**

Where any person refuses or neglects to execute or deliver any deed or conveyance as directed by any judgment or order of reference, the master may give direction as to the execution or delivery thereof.

**Rule 415**

415. The Master may cause advertisements for creditors or for heirs or next of kin, or other unascertained persons, and the representatives of such as are dead, to be published as the circumstances of the case require, and in such advertisements he shall appoint a time within which such persons are to come in and prove their claims, and shall notify them that, unless they so come in, they are to be excluded from the benefit of the order, but a claim may nevertheless be received by the Master at any later time (Form 49).

**Rule 416**

416. The Master shall consider the claims brought in before him pursuant to such advertisement upon a day to be fixed by him when settling the advertisement, and the executor or person appointed to examine the claims may require the claimant to produce before him any document in his possession (Form 50), and, if any claim is to be contested, shall cause notice of contestation to be served upon the claimant, fixing a day when he will adjudicate upon the claim (Form 45), and, where a claim is not to be contested or is to be contested in part only, a notice shall be sent according to Form 52.

**Rule 417**

417. The executor or administrator, or such other person as the Master directs, shall examine the claims sent in pursuant to the advertisement and ascertain as far as he is able, which of them are just and proper.

**Rule 418**

418. The executor or administrator, or one of the executors or administrators, or such other person as the Master directs, shall, on or before the day appointed to consider the claims, file an affidavit, verifying a list of the claims sent in pursuant to the advertisement, and stating which of them are just and proper to be allowed, and the reasons for such belief.

**Rule 419**

419. Under every order whereby the delivery of deeds or execution of conveyances is directed or becomes necessary, the Master shall give directions as to delivery of such deeds, settle conveyances where the parties differ, and give directions to the parties as to the conveyances and as to the execution thereof.

57.06 (1)  
 (2)  
 (3)  
 (4)  
 (5)

Rule 433 (1), (2)  
 Rule 433 (1), (2)  
 Rule 433 (3)  
 Rule 434  
 Rule 439

#### 57.06 Direction for Payment of Money

(1) Where pursuant to any judgment or order of reference the master directs any money to be paid at any specified time and place, he shall direct it to be paid into a bank to the credit of the party to whom it is made payable or to the joint credit of the party to whom it is made payable and the Accountant.

(2) Where money is directed to be paid to the credit of the party to whom it is made payable, he may name the bank into which he desires it to be paid and it may be paid out without an order.

(3) Where money is paid to the joint credit of the party and the Accountant, the Accountant shall sign the cheque for payment out upon the production of the consent of the party paying in, duly verified by affidavit, or by his solicitor, or in the absence of such consent, upon the order of the master.

(4) Where it appears that any money in court belongs to a minor, the master shall require evidence of the age of the minor and shall, in his report, state the date of birth of any such minor.

(5) Where any judgment or order of reference or any report directs the payment of money out of court to creditors, the person having carriage of the reference shall deposit with the Accountant a copy of such judgment, order or report, and shall give a Notice (Form 57D) to each creditor that payment of his claim, as allowed, may be obtained from the Accountant.

#### Rule 433

433.—(1) Where the Master is directed to appoint money to be paid at some time and place, he shall appoint it to be paid into a bank to the joint credit of the party to whom it is made payable and the Accountant, and the party to whom it is made payable may name the bank into which he desires it to be paid.

(2) Where money is paid into a bank in pursuance of such appointment, the party paying may pay it either to the credit of the party to whom it is made payable or to the joint credit of the party and the Accountant, and, if it is paid to the sole credit of the party, such party is entitled to receive it without order.

(3) When money is paid to the joint credit of the Accountant and the party entitled, the Accountant shall sign the cheque for payment out upon the production of the consent of the party paying in, duly verified, or of his solicitor, or, in the absence of such consent upon the order of a judge.

#### Rule 434

434. Where by a report any money in court is found to belong to infants, the Master shall require proper evidence of the age of the infants to be given before him and shall in his report state the date of birth and age at the time of his report of each of such infants, or shall certify specially his reason for not so doing.

#### Rule 439

439. Where an order is made for payment of money out of court to creditors, the person whose duty it is to prosecute the order shall send each creditor, or his solicitor, if any, a notice that the cheques may be obtained from the Accountant, and shall deposit with the Accountant any papers necessary to enable the creditors to receive their cheques (Form 53).

**NOTES**

57.07(1)  
 (2)  
 (3)

Rule 441  
 Rule 442  
 Rule 444

**PROCEDURE ON A REFERENCE      RULE 57****57.07 Conduct of Sale**

(1) Where a sale is ordered, the master may cause the property to be sold either by public auction, private contract or tender, or part by one mode and part by another, as may seem just.

(2) Where a property is directed to be sold by auction or by tender, the party having the conduct of the sale shall prepare a draft advertisement pursuant to the instructions of the master showing,

- (a) the short style of cause;
- (b) that the sale is pursuant to a judgment or order of the court;
- (c) the time and place of the sale;
- (d) a short description of the property to be sold;
- (e) the manner in which the property is to be sold, whether in one lot or several and, if in several, in how many, and in what lots;
- (f) what proportion of the purchase money is to be paid down by way of deposit, and at what time or times, and whether the residue of such money is to be paid with or without interest;
- (g) that the sale is subject to a reserve bid, if such is the case; and
- (h) the proposed conditions of sale.

(3) The proposed conditions of sale shall be those set forth in Form 57E, subject to such modification as to the master may seem just.

**Rule 441**

441. Where a sale is ordered, the Master may cause the property to be sold either by public auction, private contract or tender, or part by one mode and part by another, as he thinks best for the interest of all parties.

**Rule 442**

442. The party having the conduct of the sale shall bring into the Master's office a draft advertisement showing,

- (a) the short style of cause;
- (b) that the sale is in pursuance of an order of the court;
- (c) the time and place of the sale;
- (d) a short and true description of the property to be sold;
- (e) the manner in which the property is to be sold, whether in one lot or several, and, if in several, in how many, and what lots;
- (f) what proportion of the purchase money is to be paid down by way of deposit, and at what time or times, and whether the residue of such purchase money is to be paid with or without interest;
- (g) that the sale is subject to a reserve bid, if such is the case;
- (h) any particulars in which the proposed conditions of sale differ from the standing conditions.

**Rule 444**

444. The standing conditions of sale shall be those set forth in Form 55.

NOTES**RULE 57.07 CONTINUED**

(4) (5) (6) (7) (8) (9)

**Rule 443**  
**Rule 445**  
**Rule 446**  
**Rule 448**  
**Rule 449**  
**Rule 450**

(4) Upon the return of the appointment to give directions for the sale, the master shall settle the advertisement, fix the time and place of sale, name an auctioneer, where one is to be employed, give directions for publication of the advertisement and for the obtaining of appraisals, fix a reserve bid, if any, and make all other necessary arrangements for the sale.

(5) All parties may bid except the party having the conduct of the sale and any trustee, agent or other person in a fiduciary position to him. Where the party having the conduct of the sale wishes to bid, the master may transfer the conduct of the sale to another party or to any other person appointed by him.

(6) Where no auctioneer is employed, the master or his clerk shall conduct the sale.

(7) The deposit required by the conditions of sale shall be paid to the party having the conduct of the sale or his solicitor at the time of sale and shall forthwith be paid by him into court in the name of the purchaser.

(8) Where a contract of sale is made through an auctioneer, the auctioneer shall make an affidavit as to the result of the sale. Where no auctioneer is employed, the master shall enter the result in his Procedure Book and, in either case, the master may make an interim report on the sale (Form 57F).

(9) Objection to the sale shall be by way of appeal from the report on the sale and notice of the appeal shall be served upon all parties to the reference and upon the purchaser who shall be deemed to be a party for the purpose of any such appeal.

**Rule 443**

443. Upon the return of the appointment to settle the advertisement, the Master shall also fix the time and place of sale, name an auctioneer, where one is to be employed, give direction for publication, fix the reserve bid, and make every other necessary arrangement preparatory to the sale.

**Rule 445**

445. All parties may bid except the party having the conduct of the sale and except any trustees, agents and other persons in a fiduciary position.

**Rule 446**

446. Where no auctioneer is employed, the Master or his clerk shall conduct the sale.

**Rule 448**

448. The deposit shall be paid to the vendor or his solicitor at the time of sale and shall forthwith be paid by him into court in the name of the purchaser.

**Rule 449**

449. After the sale is concluded, the auctioneer, where one is employed, shall make an affidavit as to the result of the sale, and, where no auctioneer is employed, the Master or his clerk shall certify the result, and, where expedient, a separate report on the sale may be made (Form 56).

**Rule 450**

450. Objection to the sale shall be by motion to set it aside, and notice of the motion shall be served upon the purchaser and on the other parties, and biddings shall be opened only on special grounds.

NOTES

(10)  
 (11)  
 (12)

Rule 451  
 Rule 459  
 Rule 460

**RULE 57.07 CONTINUED**

(10) The purchaser may pay his purchase money or the balance thereof into court without order, and, after the expiration of the time for appeal from the report on the sale, upon notice to the party having the conduct of the sale, he may, if he so desires, obtain a vesting order. Where possession is wrongfully withheld from the purchaser, either the purchaser or the party having the conduct of the sale may apply for an order against any party in possession.

(11) The purchase money shall not be paid out of court except upon consent of the purchaser or his solicitor or upon proof to the Accountant that the purchaser has received a conveyance or vesting order of the property for which the money in question was paid into court.

(12) No conveyance shall be settled until evidence is produced of the purchase money having been paid into court and, where a mortgage is taken for part of the purchase money, until evidence is given to the master of such mortgage having been registered and deposited with the Accountant.

**Rule 451**

451. The purchaser may pay his purchase money or the balance thereof into court without further order, and, after confirmation of the report on sale, upon notice to the party having conduct of the sale, he may, if he so desires, obtain a vesting order, and, when he is entitled to be let into possession, if possession is wrongfully withheld from him, an order against any party in possession for the delivery thereof to him may be made upon his application or upon the application of the vendor.

**Rule 459**

459. Purchase money shall not be paid out of court except upon consent of the purchaser or his solicitor or upon proof being made to the Accountant that the purchaser has received a conveyance or vesting order in respect of the property for which the money in question was paid into court.

**Rule 460**

460. No conveyance shall be settled until evidence is produced of the purchase money having been paid into court, and, where a mortgage is taken for part of the purchase money, until evidence is given to the said officer of such mortgage having been registered and deposited with the Accountant.

NOTES57.08 (1)  
(2)Rule 461  
Rule 462**57.08 Appointment of Committee, Guardian or Receiver**

(1) Where, by any judgment or order of reference, a master is directed to appoint a committee, guardian or receiver, the master shall not report on such appointment until he has settled and approved any security required by the judgment or order and until such security has been duly filed with the Accountant.

(2) Where, by any judgment or order of reference or report, the person so appointed is required to pass his accounts or to pay his balances into court, and is in default of compliance with such direction, the master may, on the passing of accounts, disallow any compensation and may charge such person with interest on his balances.

**Rule 461**

461. Where the Master is to appoint a committee, guardian or receiver, the name proposed and the names of his proposed sureties shall be given in the appointment and the Master shall appoint the committee, guardian or receiver and settle and approve the proposed security, and, when the security has been duly filed, shall sign a written appointment.

**Rule 462**

462. The Master shall appoint a time when the person appointed is to pass his accounts and pay his balances into court, and, in default of compliance with such direction, the person appointed may, on the passing of his accounts, be disallowed any salary or compensation for his services, and may be charged with interest upon his balances.

**NOTES**

58

58.01 (a)  
 (b)  
 (c)  
 (e)

58.02

Rule 373(1) (a)  
 Rule 373(1) (d)  
 Rule 373(1) (f)  
 Rule 373(1) (i)  
 Rule 373(2)

**C O S T S****RULE 58 SECURITY FOR COSTS****58.01 Where Available**

In any action a plaintiff may be ordered to furnish security for costs where it appears that,

- \*(a) he is ordinarily resident out of Ontario;
- (b) the defendant has a judgment or order against the plaintiff for costs in another action, and those costs remain unpaid in whole or in part;
- (c) his is a nominal plaintiff, and there is good reason to believe that he has not sufficient assets in Ontario to pay the costs of the defendant if ordered to do so;
- (d) it is a corporation, and there is good reason to believe that it has not sufficient assets in Ontario to pay the costs of the defendant if ordered to do so; or
- (e) the defendant is entitled by any statute to security for costs.

**58.02 Time for Making Motion**

A motion for security for costs may be made to the court at any time after the defendant has delivered his Statement of Defence and before the action is placed on the list for trial.

**Rule 373**

- 373.—(1) Security for costs may be ordered,
- (a) where the plaintiff resides out of Ontario;
  - (b) where the plaintiff is ordinarily resident out of Ontario, though he may be temporarily resident within Ontario;
  - (c) where the plaintiff has brought another action or proceeding for the same cause which is pending in Ontario or in any other country;
  - (d) where the plaintiff, or any person through or under whom he claims, has had judgment or order passed against him in another action or proceeding for the same cause in Ontario or in any other country, with costs, and such costs have not been paid;
  - (e) where the plaintiff sues as an informer, or seeks to recover a penalty given to an informer or person who sues for it under a statute or law by which a penalty is given to any person who sues for it, either for his sole benefit, for the benefit of the Crown, or partly for his benefit and partly for the benefit of the Crown, and the defendant awarens that in his belief the plaintiff or informer is not possessed of property sufficient to answer the costs of the action in case a judgment is rendered in favour of the defendant, and that he (the applicant) has a good defence to the action upon the merits, as he is advised and believes;
  - (f) where the action is brought by a nominal plaintiff;
  - (g) where upon the examination of the plaintiff it appears that there is good reason to believe that the action is frivolous and vexatious, and that the plaintiff is not possessed of sufficient property in Ontario to answer the costs of the action;
  - (h) where an action is brought on behalf of a class and the plaintiff is not possessed of sufficient property to answer the costs of the action, and it appears that the plaintiff is put forward or instigated to sue by others;
  - (i) where under a statute the defendant is entitled to security for costs; or
  - (j) where either party to a garnishment, interpleader or other issue is an active claimant, and would, if a plaintiff, be liable to give security for costs.
- (2) A defendant must appear before obtaining an order for security for costs.

**Rule 373**

- 373.—(1) Security for costs may be ordered,
- (b) where the plaintiff is ordinarily resident out of Ontario, though he may be temporarily resident within Ontario;

## NOTES

58.03  
58.04  
58.05  
58.06

Rule 375  
Rules 376; 377  
Rule 380  
Rule 378

**58.03 Amount and Form of Security and Time for Furnishing**

The amount and form of the security and the time for paying into court or otherwise furnishing the required security shall be determined by the court.

**58.04 Form and Effect of Order**

An Order for Security for Costs (Form 58A) shall have the effect of staying all proceedings in the action from the date the order is served until the amount of security required has been furnished, unless otherwise provided.

**58.05 Default of Plaintiff**

Where a plaintiff defaults in furnishing the security required by such an order, the defendant who obtained the order may apply for an order dismissing the action with or without costs, as may seem just.

**58.06 Amount May Be Varied**

The amount of security required by an order for security for costs may be increased or decreased by the court at any time and from time to time.

**Rule 375**

375. In all cases in which an order for security for costs is obtained on application to the court, the amount of the security required to be given and the time within which the security is to be given shall be fixed by the court.

**Rule 376**

376. Where security for costs is ordered, proceedings in the action shall be stayed from the service of the order until the security is given.

**Rule 377**

377. The day on which an order for security for costs is served, and the time until and including the day on which the security is given shall not be reckoned in the computation of time allowed for taking any proceeding in the action.

**Rule 380**

380. Upon default in giving security, the action may, upon an ex parte application, be dismissed with costs.

**Rule 378**

378. The amount of security required by any order for security for costs may be increased or decreased by the court at any time and from time to time.

58.07  
58.08

Rule 379  
Rule 382

## NOTES

### **58.07 Notice of Compliance**

Upon furnishing the security required by such an order, the plaintiff shall forthwith give notice of his compliance to the defendant who obtained the order and to every other party.

### **58.08 Payment Out**

Any monies paid into court as security for costs may be paid out on the consent of the solicitors for the parties concerned without order, and may be paid to the solicitor for either party upon production of the consent of his client verified by affidavit. Where the money has been paid into court by or on behalf of an insurer of one or more of the parties, the consent of the client may be given by such insurer.

### **58.09 Effect of Rule**

Notwithstanding the provisions of this rule, any party to a proceeding may be ordered to furnish security for costs where, by these rules or otherwise, the court has a discretion to impose terms as a condition of granting him relief.

### **Rule 379**

379. Upon payment into court of the amount of security required, the plaintiff shall forthwith serve a notice upon the defendant obtaining the order, specifying the fact and purpose of such payment.

### **Rule 382**

382. Where money has been paid into court as security for costs, it may be paid out on the consent of the solicitors in the cause or matter without order and may be paid to the solicitors upon production of the consent of the client verified by affidavit.

NOTES**RULE 59 COSTS OF PROCEEDINGS BETWEEN  
PARTY AND PARTY****59.01 Authority of the Court**

Nothing in this rule shall be construed so as to interfere with the authority of the court or a judge,

- (a) to fix the costs of any proceeding, or any step therein, with or without reference to any tariff, instead of referring them for taxation;
- (b) to allow or refuse costs in respect of some particular issue or part of a proceeding;
- (c) to allow a percentage of taxed costs or allow taxed costs up to or from a particular stage of a proceeding; or
- (d) to order costs on a solicitor and client basis.

**Rule 659**

659.—(1) A judgment or order may direct payment of a sum in gross in lieu of taxed costs.

- (2) [Revoked, O. Reg. 107/74, s. 6.]
- (3) [Revoked, O. Reg. 1/79, s. 2.]

**NOTES**

59.02(1)

(g)

(i)

(j)

Rule 674  
 Rule 677  
 Rule 678  
 Rule 676

**59.02 Costs of a Proceeding**

- (1) In making any order as to costs, the court or a judge may have regard to,
- (a) the amount claimed and the amount recovered;
  - (b) the apportionment of liability;
  - (c) the complexity of the proceeding;
  - (d) the importance of the issues;
  - (e) the conduct of any party which tended to shorten or unnecessarily lengthen the duration of the proceeding;
  - (f) the manner in which the proceeding was conducted;
  - (g) any step in the proceeding that was improper, vexatious, prolix or unnecessary;
  - (h) any step in the proceeding that was taken through over-caution, negligence or mistake;
  - (i) the neglect or refusal of any party to make an admission that should have been made;
  - (j) whether or not two or more defendants or respondents should be allowed more than one set of costs where they have defended the proceeding by different solicitors, or where, although they defended by the same solicitor, they separated unnecessarily in their defence; and
  - (k) any other matter relevant to the question of costs.

**Rule 674**

674. Between party and party the Taxing Officer shall not allow the costs of proceedings,

- (a) unnecessarily taken;
- (b) not calculated to advance the interests of the party on whose behalf the proceedings were taken;
- (c) incurred through overcaution, negligence or mistake; or
- (d) that do not appear to have been necessary or proper for the attainment of justice or defending the rights of the party.

**Rule 677**

677.—(1) It is the duty of the Taxing Officer, without any direction, to disallow in whole or in part the costs of any writ, pleading, petition, affidavit, evidence, account, statement or other proceeding that is improper, unnecessary or contains unnecessary matter or is of unnecessary length.

(2) Affidavits and evidence may be disallowed, although the same may be entered as read in any judgment or order.

**Rule 678**

678. Where anything in the course of an action or reference that ought to have been admitted has not been admitted, the party who neglected or refused to make the admission may be ordered to pay the costs occasioned by his neglect or refusal.

**Rule 676**

676. Where two or more defendants defend by different solicitors under circumstances entitling them to but one set of costs, the Taxing Officer shall allow but one set of costs, and, if two or more defendants defending by the same solicitor separate unnecessarily in their defences or otherwise, the Taxing Officer shall allow but one defendant and set of costs.

## RULE 59.02 CONTINUED

(2) In awarding costs to be taxed, the court or a judge may give directions to the taxing officer in respect of any one or more of the matters referred to in paragraph (1); and, subject to such direction or in the absence of any such direction, the taxing officer shall exercise his discretion in respect of any of those matters that may appear to be relevant.

## 59.03 Costs of a Motion

## (1) Contested Motion

Where, on the hearing of a contested motion, the court is satisfied that such motion ought not to have been brought or opposed, as the case may be, the court shall fix the costs of the motion and order them to be paid forthwith or order them to be paid forthwith after taxation.

## (2) Motion Without Notice

On a motion made without notice, there shall be no costs thereof to any party, unless otherwise ordered.

## Rule 674

674. Between party and party the Taxing Officer shall not allow the costs of proceedings,

- (a) unnecessarily taken;
- (b) not calculated to advance the interests of the party on whose behalf the proceedings were taken;
- (c) incurred through overcaution, negligence or mistake; or
- (d) that do not appear to have been necessary or proper for the attainment of justice or defending the rights of the party.

## Rule 665

665. No ex parte order in an action shall contain any direction as to costs, but the costs of any such motion shall be dealt with by the Taxing Officer.

NOTES

59.05 (1)  
 (2)  
 59.06 (1)

Rule 656  
 Rule 768  
 Rule 662

**59.04 Costs on Settlement**

Where a proceeding is settled on the basis that a party thereto shall pay or recover costs, and the amount of such costs is not determined by the settlement, then, upon the filing of a copy of the minutes of settlement, such costs may be taxed in accordance with the appropriate tariffs as if an order had been made for the taxation thereof.

**59.05 Where Action Brought in Wrong Court**

(1) Where an action of the proper competence of a county court is brought in the Supreme Court, or an action of the proper competence of a small claims court is brought in the Supreme Court or in a county court, the trial judge may order that the plaintiff shall not recover any costs.

(2) Where the proceeding is dismissed for want of jurisdiction, the court shall nevertheless have jurisdiction over the costs of that proceeding.

**59.06 Costs of Litigation Guardian**

(1) In a proper case, the court may order a successful party to pay the costs of a litigation guardian of a party under disability who is a defendant or respondent only to the extent that the successful party is able to recover them from the party liable for his costs.

(2) Where a litigation guardian is ordered to pay costs, he is entitled to recover any such costs paid by him from the person under disability for whom he has acted, unless otherwise ordered.

**Rule 656**

656. Where an action of the proper competence of a county court is brought in the Supreme Court, or an action of the proper competence of a small claims court is brought in the Supreme Court or in a county court, and the trial judge makes no order to the contrary, the plaintiff shall not recover any costs.

**Rule 768**

768. Where the plaintiff fails to recover judgment in an action or other proceeding brought in a county or small claims court by reason of such court having no jurisdiction over the subject-matter thereof, the county court, or the judge presiding in the small claims court, as the case may be, has jurisdiction over the costs of such action or proceeding and may order by and to whom such costs shall be paid.

**Rule 662**

662. Where the Official Guardian or other guardian of an infant or mentally incompetent person is entitled to costs, the court may order a successful party to pay such costs and add them to his own.

NOTES**59.07 Costs of Abandoned Motion, Application or Appeal**

(1) Where a party serves a Notice of Motion and fails to set the motion down within the time prescribed by these rules, he shall be deemed to have abandoned the motion, and unless otherwise ordered, the party upon whom the notice has been served is thereupon entitled to the costs of the motion.

(2) A party who serves a Notice of Motion may countermand it by notice served on the opposite party who is thereupon entitled to the costs of the motion.

(3) The costs of any such motion may be taxed without an order, upon production of the Notice of Motion served, with an affidavit that the motion was not set down within the time prescribed by these rules, or upon the production of the notice of countermand served, as the case may be, and, if the costs are not paid within 7 days after taxation, the party entitled thereto may issue execution therefor.

(4) The provisions of this sub-rule shall apply, with any necessary modification, to a Notice of Application or to a Notice of Appeal.

**Rule 667**

667.—(1) Unless otherwise ordered, if a party who serves a notice of motion, including a notice of appeal to an appellate court does not set the motion down he shall be deemed to have abandoned it and any party upon whom the notice of motion has been served is thereupon entitled without an order to the costs of the motion.

(2) A party who serves a notice of motion may countermand it by notice served on the opposite party who is thereupon entitled to the costs of the motion.

(3) In either of such cases, the costs may be taxed without an order, upon the production of the notice of motion served, with an affidavit that the motion was not set down, or of the notice of countermand served, and, if the costs are not paid within four days from taxation, the party entitled thereto may issue an execution therefor. [Amended, O. Reg. 115/72, s. 19.]

NOTES

59.08(1) (a)  
 (b)  
 (c)  
 (d)

Rule 683(1), (2), (4)  
 Rule 683(3)  
 Rule 683(5)  
 Rule 683(6)

**59.08 Taxation of Costs**(1) *Applicability of Tariffs*

- (a) On a taxation of party and party costs, fees and disbursements according to Tariff "A" to these rules and such other disbursements according to the applicable tariff fixed by regulation pursuant to *The Administration of Justice Act* shall be taxed and allowed, and no other fees, disbursements, allowances or charges than are therein set forth shall be taxed or allowed in respect of the matters therein provided for, unless otherwise ordered.
- (b) In cases where services authorized by the Law Society of Upper Canada as being within the competence of articled students-at-law are rendered by such a student, the fees and allowances shall be taxed and allowed at an amount equal to one-half of the amount set down in Tariff "A".
- (c) Costs payable out of the proceeds of land sold, mortgaged or leased under *The Devolution of Estates Act* shall be taxed and allowed according to Tariff "B" to these rules.
- (d) On the passing of accounts by a trustee or a personal representative of a deceased person or by a committee, the master shall fix the costs of such passing of accounts according to the tariff provided for the passing of accounts in a surrogate court, subject to increase in his discretion where the tariff in his opinion is inadequate, but such discretion may be reviewed by a judge on the application of any person affected thereby.

**Rule 683**

683.—(1) Fees according to Tariff A, disbursements according to Tariff B, and fees and allowances according to Tariff C to these rules, shall be allowed and taxed, and no other fees, disbursements, allowances or charges than are therein set forth shall be allowed in respect of the matters thereby provided for.

(2) The fees and disbursements payable upon proceedings in the Supreme Court and in the county courts shall be those enumerated in Tariff B to these rules.

(3) In cases where services authorized by the Law Society of Upper Canada as being within the competence of articled students-at-law are rendered by such a student, the fees and allowances shall be taxed and allowed at an amount equal to one-half of the amount set out in Tariff A. [New, O. Reg. 286/71, s. 15.]

(4) The fees and allowances to be taken and received by sheriff other than those provided for by statute, shall be the fees and allowances set forth in Tariff C to these rules.

(5) Costs payable out of the proceeds of land sold, mortgaged or leased under *The Devolution of Estates Act* shall be allowed and taxed according to Tariff D to these rules.

(6) On the passing of accounts by a trustee or personal representative of a deceased person or by a committee, the Master shall fix the costs of such passing of accounts according to the tariff provided for the passing of accounts in the surrogate court, subject to increase in his discretion where the tariff in his opinion is inadequate, but such discretion may be reviewed by a judge on the application of any person affected thereby. [Amended, O. Reg. 286/71, s. 16.]

[All cases prior to the substantial tariff amendments in 1960 should be applied with care.—Ed.]

## NOTES

(e)

## Rule 660

## RULE 59.08 CONTINUED

- (e) In a proceeding for administration or partition, unless otherwise ordered by a judge, instead of the costs being taxed and allowed according to the applicable tariffs, each person properly represented by a solicitor and entitled to costs out of the estate, other than creditors not parties to the proceeding, is entitled to his actual disbursements in the proceeding, not including counsel fees, and there shall be allowed for the other costs of the proceeding payable out of the estate, a commission on the amount realized or on the value of the property partitioned, which commission shall be apportioned among the persons entitled to costs, as may seem just. Subject to such increase or decrease, as may be recommended by a master and approved by a judge, such commission shall be as set out in Tariff "C" to these rules and such remuneration shall be instead of all fees whether between party and party or between solicitor and client.

## Rule 660

660.—(1) In actions or proceedings for administration or partition, or administration and partition, unless otherwise ordered by a judge, instead of the costs being allowed according to the tariff, each person properly represented by a solicitor and entitled to costs out of the estate, other than creditors not parties to the action or proceeding, is entitled to his actual disbursements in the action or proceeding, not including counsel fees, and there shall be allowed for the other costs of the suit payable out of the estate a commission on the amount realized or on the value of the property partitioned, which commission shall be apportioned among the persons entitled to costs, as seems just.

Subject to such increase or decrease upon the recommendation of the Master as is approved by a judge on the confirmation of the Master's report, such commission shall be as follows:

On the first \$1,000 .....	15 per cent
On every \$100 over \$1,000 and up to \$2,500 .....	5 per cent
On every additional \$100 over \$2,500 and up to \$5,000 .....	4 per cent
On every additional \$100 over \$5,000 and up to \$10,000 .....	3 per cent
On every additional \$1,000 over \$10,000 and up to \$15,000 .....	2 per cent
On every additional \$1,000 over \$15,000 .....	1 per cent

and such remuneration shall be in lieu of all fees whether between party and party or between solicitor and client. On the application for confirmation of the Master's report, the judge may direct that the amount of such commission be varied or be taxed.

(2) Where an order or judgment in any such action or proceeding by any form of words directs that the costs thereof be taxed, it shall be taken to mean the allowance of commission and disbursements, in accordance with subsection 1, unless it is otherwise expressly provided.

(2)  
(3) (a)

Rule 668(1)  
Rule 669

229

RULE 59, CS CONTINUED

(2) *Taxing Officer*

Where any party is entitled to costs which have not been fixed, such costs may be taxed by the local taxing officer where the proceeding was commenced, but where the proceeding is in the Supreme Court, such costs shall be taxed, at the election of any party to the proceeding, by a taxing officer at Toronto.

(3) *Procedure on Taxation*

- (a) A party entitled to tax a party and party bill of costs may file with the taxing officer, a copy of the bill of costs and obtain a Notice of Appointment to Tax a Party and Party Bill of Costs (Form 59A) from the appropriate taxing officer and serve a copy of the notice and the bill of costs on every party interested in the taxation at least 7 days before the date fixed for taxation.

Rule 668

668.—(1) Where costs are ordered to be paid, they may be taxed by the local taxing officer where the proceedings were begun or, at the election of any party to the proceedings, by the Taxing Officer at Toronto.  
(Amended, O. Reg. 990/76, s. 8.)

(2) On the signing of default judgment, the officer signing judgment may fix and ascertain costs without taxation.

(3) The officer taking an account in a mortgage action may tax costs.

Rule 669

669. Where a notice of taxation is necessary, one day's notice is sufficient if served with a copy of the bill of costs and affidavit of disbursements.

NOTESRULE 59.06 CONTINUED(b)  
(c)  
(4) (a)Rule 671  
Rule 671  
Rule 670

- (b) Where a party entitled to tax a party and party bill of costs refuses or neglects to bring in his bill of costs for taxation within a reasonable time, any party liable to pay such costs may obtain a Notice of Appointment to Deliver a Party and Party Bill of Costs for Taxation (Form 59B) from the appropriate taxing officer and serve a copy thereof on every party interested in the taxation at least 21 days before the date fixed for the taxation. Upon being served with such a notice, the person required to deliver and tax his party and party bill of costs shall file and serve a copy thereof on every party interested in the taxation, at least 7 days before the date fixed for the taxation.
- (c) Where a party is required to deliver a bill of costs for taxation and fails to do so at the appointed time, to the prejudice of any other party, the taxing officer may allow the defaulting party a nominal or other sum for costs so as to prevent such other party being prejudiced by such default.
- (d) On any taxation of party and party costs, the taxing officer shall certify the amount of the costs taxed by him and, subject to appeal, his Certificate (Form 59C) is final and conclusive as to the amount therein specified against all parties who have received notice of the taxation.

*(4) Discretion of the Taxing Officer*

- (a) On the taxation of costs to be paid out of a fund or an estate, the taxing officer may direct what parties are to attend on the taxation and he may disallow the costs of any party whose attendance he considers unnecessary by reason of the interest of such party in the fund or estate being small or remote or sufficiently protected by other interested parties.

**Rule 671**

**671.** Where a party entitled to costs refuses or neglects to bring in his bill of costs for taxation or to procure the bill to be taxed and thereby prejudices any other party, the Taxing Officer shall certify the costs of the other parties and certify such refusal or neglect, or may allow such party refusing or neglecting a nominal or other sum for such costs, so far as to prevent any other party being prejudiced by such refusal or neglect.

**Rule 670**

**670.** The Taxing Officer may direct what parties are to attend before him on the taxation of costs to be borne by a fund or estate, and he may disallow the costs of any person whose attendance he considers unnecessary in consequence of the interest of such party in the fund or estate being small or remote or sufficiently protected by other parties interested.

NOTES**RULE 59.02 CONTINUED**

- (b) Where several actions are brought on one bond, recognizance, promissory note, bill of exchange or other instrument, there shall be collected or recovered the costs taxed in one action only, at the election of the plaintiff, and the actual disbursements only in the other actions, unless the court otherwise orders.
- (c) Where any one of the persons constituting a class formed by a master for representation in his office by one solicitor insists on being represented by a different solicitor, he shall pay the costs of his own solicitor and all such further costs as are occasioned to any of the parties by his being represented by a different solicitor from the solicitor so designated.
- (d) Where a party entitled to receive costs from another party is required to pay costs to that party, the taxing officer may adjust the costs by way of set-off.
- (e) Unless otherwise ordered, no disbursements, other than fees paid to officers of the court, shall be allowed or taxed unless the payment thereof or the liability therefor is established, either by the solicitor appearing on the taxation, or by affidavit.

(b)  
(c)  
(d)  
(e)

Rule 663  
Rule 664  
Rule 672  
Rule 679

**Rule 663**

663. Where several actions are brought on one bond, recognizance, promissory note, bill of exchange or other instrument, or where several actions are brought against the maker and endorser of a note or against the drawer, acceptor or endorser of a bill of exchange, there shall be collected or recovered the costs taxed in one action only, at the election of the plaintiff, and the actual disbursements only in the other actions, unless the court otherwise orders, but this provision does not extend to any interlocutory costs.

**Rule 664**

664. Where any one of the persons constituting a class formed by a master for representation in his office by one solicitor insists on being represented by a different solicitor, he shall pay the costs of his own solicitor and all such further costs as are occasioned to any of the parties by his being represented by a different solicitor from the solicitor so nominated.

**Rule 672**

672. Where a party entitled to receive costs is liable to pay costs to any other party, the Taxing Officer may adjust the costs by way of deduction or set-off.

**Rule 679**

679.—(1) An affidavit of disbursements shall be made by the solicitor in the cause or matter or by a clerk having the management thereof, or by the client, setting forth the sum paid to counsel, the names of witnesses, their places of abode, the places at which they were subpoenaed and the distance which each such witness was necessarily obliged to travel in order to attend the trial, and the sums paid to them, and shall state that all such witnesses were necessary and material for the client in the cause or matter, that they did attend, and that they did not attend as witnesses in any other cause (or otherwise, as the case may be), and the number of days that each witness was necessarily absent from home in order to attend the trial.

(2) If a solicitor attends as a witness, it shall be stated whether or not he attended at the place of trial as solicitor or witness in any other cause and whether or not he had any other business there, and the day on which the trial took place shall be stated.

(3) The necessity for maps and plans used at the trial, the sum paid for them, and that they were prepared or procured with a view to the trial of the cause, shall be shown by the affidavit of disbursements.

(5) (a)  
(b)  
(c)Rule 688 (1)  
Rule 688 (2)  
Rule 689NOTES

## RULE 59.06 CONTINUED

(5) *Objections to Taxation*

- (a) Upon request, the taxing officer shall withhold his certificate for 7 days, or such other time as he may direct, in order to allow a party who is dissatisfied with the allowance or disallowance by the taxing officer of the whole or any part of any item to deliver to every other party interested therein and to the taxing officer, objections in writing to such allowance or disallowance, specifying concisely the item objected to.
- (b) A party upon whom objections have been served may, within 7 days of such service, or within such other time as the taxing officer may direct, deliver to every other party interested therein and to the taxing officer, a reply thereto.
- (c) The taxing officer shall then reconsider and review his taxation upon such objections and reply, if any, and he may receive further evidence in respect thereof, and he may, and if requested he shall, state in writing the grounds and reasons for his decision thereon.

## Rule 688

688.—(1) Upon request, the Taxing Officer shall withhold his certificate for seven days, or such other time as he may direct, in order to allow a party who is dissatisfied with the allowance or disallowance by the Taxing Officer of the whole or any part of any item to deliver to every other party interested therein and to the Taxing Officer objections in writing to such allowance or disallowance, specifying concisely the item objected to.

(2) A party upon whom objections have been served may within seven days of such service, or within such other time as the Taxing Officer may direct, deliver to every other party interested therein and to the Taxing Officer a reply thereto.  
(See also Rule 616.—Ed.)

## Rule 689

689. The Taxing Officer shall then reconsider and review his taxation upon such objections and reply, if any, and he may receive further evidence in respect thereof, and he may, and if requested he shall, state either in his certificate of taxation or by reference to such objections or reply, the grounds and reasons for his decision thereon and any special facts or circumstances relating thereto. [Amended, O. Regs. 285/71, s. 16; 990/76, s. 13.]

NOTES

(6)	Rule 516(2)
59.09(1)	Rule 690(1)
(2)	Rule 690(2)
(3)	Rule 691; 692

**COSTS OF PROCEEDINGS  
BETWEEN PARTY AND PARTY**

RULE 59

**(6) *Appeal from Taxation***

- (a) A party may appeal from any decision of any officer taxing costs upon any question of principle or as to any item in respect of which objections have been duly filed, in a Supreme Court proceeding, to a judge of the Supreme Court or, in a county court proceeding, to a judge of that court.
- (b) The time for any such appeal and the procedure thereon shall be governed by the provisions of Rule 63 as if the appeal were from an interlocutory judgment or order of a master, local judge, local master or other officer.

**59.09 Costs of a Sheriff**

(1) A sheriff claiming any fees, expenses or remuneration that have not been taxed shall, upon being required by either party and on payment of the prescribed fee, furnish such party with a copy of his bill of costs and have the same taxed by the proper taxing officer in his county.

(2) A sheriff shall not, without taxation, collect any fees, costs or expenses after he has been required to have the same taxed.

(3) Either the sheriff or the party requiring taxation may obtain an appointment for the taxation and the procedure thereon shall be the same as in the case of a taxation between party and party.

**Rule 516**

(2) In other cases, a party dissatisfied with the decision of a taxing officer upon any question of principle or as to any item respecting which objections have been duly filed, may appeal from the certificate of the taxing officer to a judge, and the practice upon the appeal shall be the same as upon an appeal from an order made by the Master. [Amended, O. Reg. 520/78, s. 28.]

**Rule 690**

**690.—(1)** A sheriff claiming any fees, expenses or remuneration that have not been taxed shall, upon being required by either party and on payment of 25 cents for a copy of his bill in detail (which he is bound to render), have his fees, expenses or remuneration, as the case may be, taxed by the proper taxing officer of his county. [Amended, O. Reg. 307/72, s. 7(a).]

(2) A sheriff shall not, without taxation, collect any fees, costs or expenses after he has been required to have the same taxed. [Amended, O. Reg. 307/72, s. 7(b).]

**Rule 691**

**691.** The sheriff or the party requiring taxation may obtain an appointment for taxation, and the Taxing Officer, upon proof of service of such appointment or upon the parties attending before him, shall examine the bill and satisfy himself that the items charged in the bill are correct and legal, and strike out items charged for unnecessary services, and give, when requested, a certificate of the taxation.

**Rule 692**

**692.** A party dissatisfied with the taxation may appeal therefrom in ordinary cases of taxation between party and party.

## NOTES

(4)

(5)

## RULE 59,00 CONTINUED

(4) The sheriff is entitled to his fees and expenses on the enforcement of a Writ of Seizure and Sale, even where no money is realized on the seizure or sale.

(5) Where a person liable under a Writ of Seizure and Sale is dissatisfied with the amount of fees or expenses claimed by a sheriff in respect of the enforcement thereof, he may apply to a judge, before or after payment thereof, upon notice to the sheriff and, if the amount appears to be unreasonable, notwithstanding that it is in accordance with the tariff, the judge may reduce the amount, or order the amount to be refunded upon such terms as may seem just.

Rule 693; 694

Rule 695

## Rule 693

693.—(1) Where part only is made by the sheriff on or by force of an execution against goods and chattels, he is entitled to his fees and expenses of execution, and, where the personal estate, except chattels real, of the judgment debtor is seized or advertised on or under an execution, but not sold by reason of satisfaction having been otherwise obtained, or from some other cause, and no money is actually made by the sheriff on or by force of such execution, the sheriff is entitled to his fees and expenses of execution.

(2) Where land or chattels real of the judgment debtor have been advertised under an execution but have not been sold by reason of payment or satisfaction having been otherwise obtained on, or within one month before the day on which the property has been advertised to be sold, or any day to which the sale may be adjourned, the sheriff is entitled to his fees and expenses of execution. [Amended, O. Reg. 307/72, s. 8.]

## Rule 694

694. Where there are writs of execution upon the same judgment to several counties or districts and the personal estate of the judgment debtor has been seized or advertised in one or more of such counties or districts but not sold by reason of satisfaction having been obtained under and by virtue of a writ in any of the counties and no money has been actually made on the execution, the sheriff is entitled to mileage and fees only for the services actually rendered and performed by him, and the Taxing Officer may allow him a reasonable charge for such services in case no special fee therefor is assigned in any tariff of costs. (Amended, O. Reg. 307/72, s. 9.)

## Rule 695

695. Where a person liable on an execution is dissatisfied with the amount of fees or expenses of execution claimed by a sheriff, the court may, before or after payment thereof, upon the application of such person, upon notice to the sheriff, if the amount appears to be unreasonable, notwithstanding that it is according to the tariff, reduce the amount or order the amount to be refunded upon such terms as seem just. [Amended, O. Reg. 307/72, s. 10.]

#### 59.10 Liability of the Solicitor for Costs

(1) In any proceeding where a solicitor for any of the parties has acted in manifest disregard of the interests of justice and has thereby caused costs to be incurred improperly, or without reasonable cause, or wasted by undue delay, negligence or other default, the court may make an order,

- (a) disallowing costs as between the solicitor and his client;
- (b) directing the solicitor to reimburse his client for any costs that the client has been ordered to pay to any other party; and
- (c) ordering the solicitor personally to pay the costs of any party.

(2) Such an order may be made by the court, on its own motion, or on the motion of any party to the proceeding, but no such order shall be made unless the solicitor is given a reasonable opportunity to make representations to the court.

(3) The court may direct that notice of any order against a solicitor under this sub-rule shall be given to his client in such manner as may be specified in the order.

#### 59.11 Charging Order

(1) Where a solicitor has been employed to commence, continue or defend any proceeding, a judge may, upon an application, declare such solicitor, or his personal representative, to be entitled to a charge upon the property recovered or preserved through the instrumentality of such solicitor, for his costs, charges and expenses of or in reference to such proceeding, and all conveyances and acts done to defeat, or which may operate to defeat, such right, unless made to a bona fide purchaser for value without notice, are absolutely void and of no effect as against such charge.

(2) The judge may make an order for taxation of such costs, charges and expenses and for the raising and payment of the same out of the property.

## Rule 696

696.—(t) Where a solicitor has been employed to prosecute or defend any cause or matter, the court may, upon a summary application, declare such solicitor, or his personal representatives, to be entitled to a charge upon the property recovered or preserved through the instrumentality of such solicitor, for his costs, charges and expenses of or in reference to such cause, matter or proceeding, and all conveyances and acts done to defeat, or which may operate to defeat, such charge or right are, unless made to a bona fide purchaser for value without notice, absolutely void and of no effect as against such charge.

(2) The court may make an order for taxation of such costs, charges and expenses and for the raising and payment of the same out of the property.

NOTES**JUDGMENTS****RULE 60 SETTLING, SIGNING AND ENTERING JUDGMENTS****60.01 Endorsement by Judge or Officer**

(1) Subject to paragraph (2), every judgment shall be endorsed on the trial record, notice of motion or notice of application, as the case may be, by the judge or officer giving it.

(2) Where written reasons for a judgment are delivered, the endorsement may consist of a simple reference to the reasons, and a copy of the reasons shall be filed in the court file.

**60.02 Drafting and Approval of Formal Document**

(1) Any party affected thereby may prepare a draft of the formal judgment and a copy thereof shall be submitted to all other parties represented at the trial or hearing for approval as to its form.

(2) Where such approval is not received within a reasonable time, an appointment shall be obtained for the settling of the judgment before the registrar or, where deemed necessary, before the judge or officer giving it, and the appointment shall be served on all other parties represented at the trial or hearing.

(3) In a case of urgency, the judgment may be settled and signed by the judge or officer who gave it without the approval of any of the parties represented at the trial or hearing as to its form.

**Rule 264**

264. The verdict and judgment shall be endorsed on the record, and shall also be recorded by the registrar or officer acting as clerk at the sittings in a book to be kept for recording the proceedings thereat.

**Rule 534**

534. Notice of settling minutes of a judgment or order, other than a simple judgment or order for recovery of a sum certain with or without costs or dismissing an action or motion, shall be given unless dispensed with by the officer by whom the judgment or order is to be settled, and the proposed minutes of the judgment or order shall be served or left in his office for inspection, and any party may take a copy thereof.

60.03(1)  
 (3)  
 (4)  
 (5)  
 (6)  
 (7)

Rule 519  
 Rule 517  
 Rule 520  
 Rule 521  
 Rule 525(1), (2), (3)  
 Rule 525(4)

#### 60.03 Form of Judgment

(1) Every judgment shall show on its face the day of the week, the month and the year on which it was given and shall take effect from that date. Except where required by the rules or by any statute to be made by the registrar, the judgment shall show the name of the judge or officer who gave it.

(2) Every judgment given by a judge or officer shall recite in its preamble the date upon which the trial or hearing took place, the parties who were present at the trial or hearing in person or by counsel and those who were not, and shall recite any undertaking made by a party as a condition upon which the judgment was given.

(3) The operative parts of a judgment shall be divided into convenient paragraphs, numbered consecutively.

(4) A judgment directing payment into court on behalf of a minor shall show the date of birth and the full address of the minor and shall direct that a copy thereof be served on the Official Guardian.

(5) A judgment for the payment of costs shall direct payment to the party entitled to receive such costs and not to his solicitor.

(6) A judgment directing a reference may direct in general terms that all necessary inquiries be made, accounts taken and costs taxed as the case may be.

(7) A judgment directing a reference in general terms shall have the effect of conferring upon the person to whom the reference has been directed all the powers given to any such person by these rules.

#### Rule 519

519.—(1) Every judgment or order shall show on its face the day of the week and month on which it was given or made, and every judgment shall also show the date upon which it was actually signed, and (except judgments signed by default and praecipe orders) shall show the name or names of the judge or officer who gave or made it, and shall take effect from its date (Form 68). [Amended, O. Reg. 520/78, s. 29.]

(2) Every judgment providing for the payment of money on which interest is payable shall show on its face the rate of interest thereon. [New, O. Reg. 850/79, s. 1.]

#### Rule 517

517. Judgments and orders shall be divided into convenient paragraphs, numbered consecutively.

#### Rule 520

520. An order for payment of money into court on behalf of, or as the property of, an infant shall, unless otherwise directed, state the date of the birth and the full address of the infant and shall direct that a copy thereof be served on the official guardian. [Amended, O. Reg. 285/71, s. 14.]

#### Rule 521

521. All judgments and orders directing payment of costs shall direct payment to the party entitled to receive it and not to his solicitor.

#### Rule 525

525.—(1) Any judgment in a mortgage action may direct in general terms that all necessary inquiries be made, accounts taken, costs taxed and proceedings had for redemption or foreclosure (or for redemption or sale, as the case may be) and that for these purposes the cause is referred to (naming the master).

(2) Any judgment directing a sale may so direct in general terms and refer the action to the master for that purpose.

(3) Any judgment directing partition or administration may be in general terms.

(4) Any judgment in general terms shall confer upon the master all the powers given by these rules and all other powers necessary to enable him to carry the judgment into full effect.

60.04(1)

(2)

(3)

Rules 532; 533(1); 537(1)

(4); 538

Rules 533(2); 538

Rule 535

Rule 532

532. Judgments and orders pronounced in trials at Toronto shall be settled by the registrar to whom is assigned the duty of settling judgments.

Rule 533

533.—(1) Judgments in cases tried elsewhere than at Toronto shall be settled by the local registrar or other officer acting as registrar at the place of trial, unless a party affected applies to the registrar at Toronto to whom is assigned the duty of settling judgments to settle it or to reconsider the settlement of it by the local officer.

(2) When settled, the minutes may be varied by the trial judge on the application of either party.

Rule 637

537.—(1) Every judgment shall be signed by the Registrar or by the proper officer in whose office the action was commenced.

\* (2) Every judgment or order pronounced by the court shall be settled and signed by the registrar or officer attending the court at which it is pronounced, but the judge pronouncing such order may himself settle or sign it. [Amended, O. Reg. 520/78, s. 33.]

\* (3) Every judgment or order pronounced by a local judge or a county court judge, other than a judgment after trial, shall be settled and signed by the judge pronouncing it, but, where the judge who pronounced it has signed a memorandum of it, it may be settled and signed by the local registrar or clerk of the county court of the county in which it was pronounced. [Amended, O. Reg. 520/78, s. 34.]

\* (4) Orders made by an officer shall be signed by him, but in his absence an officer having concurrent jurisdiction may sign an order that has been approved by all parties represented on the application in the name of the officer who pronounced it by subscribing on it the name of such officer and adding thereto his own signature and office preceded by the word "by". [Amended, O. Reg. 520/78, s. 35.]

\* (5) Orders made by a judge of the Court of Appeal shall be settled and signed by the Registrar or by the judge.

Rule 538

538.—(1) Every judgment or order of the Divisional Court may be settled and initialled by the Registrar or by the local registrar at the place of hearing.

(2) Every other judgment or order of an appellate court shall be settled and initialled by the Registrar.

(3) Any party to the appeal who is dissatisfied with the judgment or order as settled by the Registrar may apply on notice of motion returnable before the Chief Justice or other presiding judge of the court that heard the appeal, specifying in precise terms the alteration sought by him, and the Chief Justice or other presiding judge may hear the application or may delegate the hearing to any other member of the court who heard the appeal.

(4) The judge settling the judgment or order may refer the motion to the court. [Amended, O. Reg. 115/72, s. 16.]

Rule 535

535. Where judgment may be signed upon the filing of an affidavit or production of a document, the officer shall examine the affidavit or document produced and ascertain that it is regular and sufficient.

Rule 537

(6) Where an officer has ceased to hold office after pronouncing judgment and before signing the order, an officer having jurisdiction to make such an order may settle and sign it. [Amended, O. Reg. 520/78, s. 37.]

**NOTES**

60.05(1) (a)  
 (b)  
 (2)  
 (3)  
 (4)

Rule 523  
 Rule 522(2)  
 Rule 522(1)  
 Rule 531  
 Rule 530

**60.05 Entry of Judgment**

(1) Entry of a judgment shall be made by the registrar,

- (a) inscribing at the foot of the original of the document a notation as to the Entry Book in which an authenticated copy is to be inserted or the film on which the original is to be photographed, as the case may be, together with the date when such insertion or photograph was made; and
- (b) inserting an authenticated copy thereof in an Entry Book, or photographing the original document on microphotographic film.

(2) Every judgment shall be entered in the office of the registrar in which the proceeding was commenced and a copy thereof as entered shall be filed in the court file.

(3) Every judgment by which a prior judgment is affirmed, reversed, set aside, varied, modified or amended shall, in addition to any other entry thereof, be entered in the office where the original judgment was entered.

\* (4) A judgment of an appellate court shall also be entered in the office of the local registrar at Toronto.

(5) The certificate of the Registrar of the Supreme Court of Canada as to a judgment made on an appeal to that court shall be entered in the office of the local registrar at Toronto and in the office of the registrar in which the proceeding was commenced.

(6) The certificate of a taxing officer as to the taxation of party and party costs awarded by a judgment shall be entered in the office of the registrar in which such judgment was entered and shall be cross-indexed therewith.

**Rule 523**

523.—(1) The entering clerk shall note in the margin of the judgment or order book the day of entering, and shall at the foot of the judgment or order note the same date and a reference to the book in which the entry has been made.

(2) Where the judgment or order is recorded by photographic plate, microphotographic film or photocopy negative, the date of recording and a reference to the plate, film or negative number and to the document number shall be noted on the judgment or order before recording.

**Rule 522**

522.—(1) Every judgment and every order shall be entered at full length in the office in which the cause or matter was commenced. [Amended, O. Reg. 520/78, s. 30.]

(2) Entry shall be made by

- (a) copying the order or judgment or inserting a facsimile thereof in the book kept for that purpose; or
- (b) recording the order or judgment on microphotographic film; or
- (c) any other process which shall be approved by the Chief Justice of Ontario.

**Rule 531**

531. Every judgment and order by which a judgment is affirmed, reversed, set aside, varied or in any way modified shall, in addition to any other entry thereof, be entered in the office where the original judgment or order was entered.

**Rule 530**

530. Upon the production of the certificate of the Registrar of the Supreme Court of Canada upon an appeal to the court, the officer of this court with whom the judgment or order appealed from was entered shall cause the certificate of the Supreme Court of Canada to be entered, and all subsequent proceedings may be taken thereupon as if the decision had been given in this court.

**Rule 524**

524.—(1) All judgments and orders of the Court of Appeal shall be entered in the Registrar's office at Toronto and, if the action was commenced elsewhere, also in the office where the action was commenced.

(2) All judgments and orders of the Divisional Court shall be entered in the office in which the cause or matter was commenced. [Amended, O. Reg. 115/72, s. 16.]

60.06 (a)  
(b)  
(c)

Rule 527  
Rule 528  
Rule 529

#### 60.06 Amendment of Judgment

Any judgment may be amended on a motion in the proceeding where,

- (a) there are clerical mistakes in the judgment or errors arising from an accidental slip or omission;
- (b) the judgment requires amendment in any particular on which the court did not adjudicate; or
- (c) a party is entitled to maintain an action for the reversal or variation of the judgment upon the ground of matter arising subsequent to the making thereof or subsequently discovered, to impeach the judgment on the ground of fraud, or to suspend the operation of the judgment, or to carry the judgment into operation, or for any further or other relief than that originally awarded.

#### Rule 527

627. Clerical mistakes in judgments or orders or errors arising therein from any accidental slip or omission may at any time be corrected on motion. [Amended, O. Reg. 520/78, s. 32.]

#### Rule 528

628. Where a judgment or order requires amendment in any particular on which the court did not adjudicate, it may be amended on motion.

#### Rule 529

529. A party entitled to maintain an action for the reversal or variation of a judgment or order upon the ground of matter arising subsequent to the making thereof or subsequently discovered, or to impeach a judgment or order on the ground of fraud, or to suspend the operation of a judgment or order, or to carry a judgment or order into operation, or to any further or other relief than that originally awarded, may move in the action for the relief claimed.

NOTES

61

- 61.01 (1)
  - (2)
  - (3)
- 61.02

**JUDGMENTS****RULE 61 ENFORCEMENT OF JUDGMENTS****61.01 Enforcement of Judgment for Payment or Recovery of Money**

(1) A judgment for the payment or recovery of money may be enforced by the issue of a Writ of Seizure and Sale (Form 61A) against the property of the debtor.

(2) Where a judgment is for the payment of money into court, a Writ of Seizure and Sale shall be endorsed with a notice to the effect that all money realized by the sheriff pursuant thereto is to be paid into court.

(3) Where a judgment is for payment within a specified time, a Writ of Seizure and Sale shall not issue until after the expiration of that time.

**61.02 Enforcement of Judgment for Possession of Real Property**

A judgment for the recovery or delivery of the possession of land may be enforced by the issue of a Writ of Possession (Form 61B).

- Rule 540  
 Rules 541; 543  
 Rule 556  
 Rule 567 (1)

**Rule 540**

540. A judgment for the recovery by or payment to a person of money may be enforced by the issue of a writ of execution against the goods and chattels, lands and tenements of the debtor, but, if the amount due on the judgment is less than \$200, no execution shall issue against lands and tenements.

NOTE: See requirements of The Execution Act, R.S.O. 1970, c. t62.

**Rule 541**

541. Any judgment for the payment of money into court may be enforced in the same way as a judgment for payment to a person, and the person having the carriage of the judgment shall be deemed to be a judgment creditor for the purpose of its enforcement.

**Rule 543**

543. Every writ of execution for the levying of any money to be paid into court shall be endorsed by the officer issuing the writ with the following notice: "All Money made under this Execution is to be paid into Court by the Sheriff."

**Rule 556**

556. Every judgment creditor is entitled immediately to issue one or more writs of fieri facias, but, if the judgment is for payment within a period therein mentioned, the writ shall not be issued until after the expiration of such period (Forms t15, t16 and t17).

NOTES61.03  
61.04 (1)Rule 580(1)  
Rules 569; 570; 580 (3)**61.03 Enforcement of Judgment for Delivery of Personal Property**

A judgment for the delivery of any personal property, other than land or money, may be enforced by the issue of a Writ of Delivery (Form 61C).

**61.04 Enforcement of Judgment to Do or Abstain from Doing any Act**

(1) A judgment requiring any party to do any act, other than the payment of money, or to abstain from doing any act, may be enforced against the party refusing or neglecting to obey the judgment by a contempt order made by a judge on the motion of any party entitled to enforce obedience to the judgment and on notice to the party against whom the order is sought.

(2) A contempt order shall not be granted unless the judge is satisfied that the party required by the judgment to do, or abstain from doing any act had actual knowledge of the substance of the judgment before the expiration of the time limited by the judgment, if any, for the doing or abstaining from the act.

(3) Where the judgment does not specify any time within which the act is to be done or abstained from, a judge may fix the time within which compliance is to be required.

**Rule 580**

580.—(1) Where a judgment directs the recovery of specific goods, chattels, deeds, securities, documents or any property other than land or money, a writ of delivery may issue directing the sheriff to cause such goods or property to be delivered up in accordance with the judgment (Form t23).

(3) By leave of the court, such judgment may also be enforced by attachment, committal or sequestration.

**Rule 569**

569. A judgment requiring any person to do an act, other than the payment of money, or to abstain from doing anything, may be enforced by attachment or by committal (Form t25).

**Rule 570**

570. A writ of attachment shall not be issued without the leave of the court or a judge, on notice to the person against whom the attachment is to be issued.

NOTES61.05(1)  
(21(a))**61.05 Writ of Seizure and Sale**(1) *Where Available Without Leave*

Where a judgment may be enforced by a Writ of Seizure and Sale, the judgment creditor is entitled to the issue of one or more Writs of Seizure and Sale.

(2) *Where Leave is Required*

- (a) A Writ of Seizure and Sale shall not issue for the enforcement of a judgment for the payment of recovery of money without first obtaining leave of the court where,
  - (i) six years or more have elapsed since the date of the judgment;
  - (ii) a change has taken place, whether by death or otherwise in the parties entitled or liable under the judgment;
  - (iii) any property sought to be seized under a Writ of Seizure and Sale is in the hands or a receiver appointed by the court; or
  - (iv) the enforcement of the judgment is subject to the fulfilment of any condition or contingency.
- (b) Where the court grants leave to issue a Writ of Seizure and Sale and it is not issued within one year from the date of the order granting such leave, the order granting leave shall cease to have effect, but nothing in this clause shall preclude the granting of a subsequent application for such leave.

Rule 556  
Rules 544; 545; 546**WRITS OF FIERI FACIAS**

## Rule 556

556. Every judgment creditor is entitled immediately to issue one or more writs of fieri facias, but, if the judgment is for payment within a period therein mentioned, the writ shall not be issued until after the expiration of such period (Forms I15, I16 and I17).

## Rule 544

544. Where a party is by a judgment entitled to or upon the fulfilment of a condition or contingency, he may, upon the fulfilment of the condition or contingency, apply for leave to issue execution.

## Rule 545

545. As between the original parties to a judgment, a writ of execution other than a writ of possession may, without leave, issue at any time within six years from the date of the judgment.

## Rule 546

546. Where the six years have elapsed or where a party is entitled to execution upon a judgment of assets in futuro or where any change has taken place by death or otherwise in the parties entitled or liable to execution, the party alleging himself to be entitled to execution may apply to the court for leave to issue execution. Where a party against whom execution has been issued changes his name, the execution creditor, or his solicitor, may file an affidavit with the sheriff which identifies the execution debtor by new name.

Upon receipt of such an affidavit the sheriff shall:

- (a) Amend the writ of execution by adding thereto "also known as . . ."
- (b) Amend his index accordingly, and
- (c) Where a copy of this writ has been transmitted to the Master of Titles under The Land Titles Act, he shall transmit a copy of the amended writ to that Master of Titles. [Amended, O. Reg. 32/78, s. 4.]

[See cases under Rule 566.—Ed.]

## NOTES

(3) (a)  
 (b)  
 (c)  
 (d)

Rule 566 (1)  
 Rule 566 (1)  
 Rule 566 (2)  
 Rule 566 (3)

## RULE 61.05 CONTINUED

(3) *Duration and Renewal*

- (a) A Writ of Seizure and Sale shall remain in force for 6 years from the date of its issue and for a further 6 years from each renewal thereof.
- (b) Where a Writ of Seizure and Sale is filed with any sheriff, he shall serve notice of its expiration by mailing such notice not less than 30 days nor more than 60 days prior to such expiration to the party who filed the Writ of Seizure and Sale addressed to him at the last address of such person endorsed thereon.
- (c) A Writ of Seizure and Sale which is filed with any sheriff may be renewed by filing with him before its expiration a Request to Renew (Form 61D) and the sheriff shall endorse and sign upon the Writ of Seizure and Sale a memorandum stating the day, month and year of such renewal, and a Writ of Seizure and Sale so endorsed shall be entitled to priority according to the time of the last filing thereof.
- (d) A Writ of Seizure and Sale which is not filed with any sheriff may be renewed by filing with the registrar who issued it before its expiration a Request to Renew, and the registrar shall endorse and sign upon the Writ of Seizure and Sale a memorandum stating the day, month and year of such renewal.

## Rule 566

566.—(1) A writ of *heli facias* remains in force for six years from its issue, unless renewed before its expiration, when it is in force for a further period of six years from the date of such renewal, and so on from time to time, and where the writ is filed with a sheriff, he shall send notice of such expiration by ordinary mail not less than one month nor more than two months prior to such expiration to the person who filed the writ at the last address of such person endorsed thereon.

(2) A writ which is filed with a sheriff may be renewed by filing with him before the writ expires a praecipe (Form 118), and the sheriff shall endorse and sign upon the writ a memorandum stating the day, month and year of such renewal, and a writ so endorsed shall be entitled to priority according to the time of the last filing thereof.

(3) A writ which is not filed with a sheriff may be renewed by filing the praecipe before the writ expires with the officer who issued the writ, and the officer shall make the same endorsement accordingly.

## NOTES

## RULE 61.05 CONTINUED

(4) (a)  
 (b)  
 (5)  
 (6)

Rules 548; 549; 550  
 Rule 547  
 Rule 557  
 Rule 557

## ENFORCEMENT OF JUDGMENTS RULE 61

(4) *Writs of Seizure and Sale to be Endorsed*

Every Writ of Seizure and Sale shall be endorsed with,

- (a) a direction to any sheriff with whom the Writ is filed, or to be filed, to levy the amount still owing to the judgment creditor under the judgment and specifying that amount including interest thereon at the rate and from the date specified by the judgment. In addition to the sum so specified, the direction to levy shall direct the sheriff with whom the Writ is filed to levy an amount sufficient to recover his fees and expenses.
- (b) the name and address of the party and of his solicitor, if any, directing a sheriff to levy.

(5) *Seizure of Chattels*

Where chattels are seized under a Writ of Seizure and Sale, the sheriff shall, on request, deliver to the owner, his agent or servant, an inventory thereof before they are removed from the premises from which they have been so seized.

(6) *Sale of Chattels*

Chattels seized under a Writ of Seizure and Sale shall not be sold by the sheriff until he has,

- (a) mailed to the execution creditor or his solicitor and to the owner, his agent or employee, at the last known address, notice of the time and place of the sale, at least 10 days prior to the date of the sale; and
- (b) published notice of the time and place of the sale in a newspaper having a general circulation in the county where the chattels have been seized.

## Rule 548

548.—(t) Every writ of execution for the recovery of money shall be endorsed with a direction to the officer to whom it is directed to levy the money due and payable and sought to be recovered under the judgment, stating the amount, and also to levy interest thereon which, unless otherwise ordered by the court, shall be at the prime rate existing for the month preceding the month in which judgment was given, established in the same manner as provided in sub-sections (1) and (2) of section 38 of The Judicature Act from the time of the rendering of the verdict or of the giving of the judgment, as the case may be.

(2) Costs shall bear interest at the rate the judgment bears interest and shall be computed from the date of the judgment awarding the costs. [Amended O. Reg. 850/79, s. 2.]

## Rule 549

549. The officer issuing the writ or renewal thereof shall endorse upon it a memorandum signed by him of the amount which the party issuing it is entitled to receive for its costs, and any renewal and for any further or other writs or renewals, and no sum not so endorsed is to be collected for such costs.

## Rule 550

550. Upon every execution there may be levied, in addition to the sum recovered by the judgment and interest thereon, the fees and expenses of execution. [Amended, O. Reg. 397/72, s. 6.]

## Rule 547

547. Every writ of execution shall be endorsed with the name and address of the solicitor issuing it, and, if he issues it as agent for another solicitor, the name and address of such other solicitor shall also be endorsed, and where the writ is issued by a suitor in person, his name and address shall be endorsed.

## Rule 557

557. Where goods or chattels are seized in execution under a writ of fieri facias, the sheriff or his officers acting for him shall, on request, deliver to the owner, his agent or servant, an inventory thereof before they are removed from the premises on which they have been so seized, and no sheriff or other officer shall sell any goods or chattels under a writ of execution until he has previously thereto forwarded a notice of the time and place of the sale to the execution creditor or his solicitor and to the said owner, his agent or servant, by registered mail to the last known address, at least eight days prior to the date of the sale, and by publishing such notice in a newspaper having a general circulation in the county or district where the goods or chattels have been seized.

## NOTES

(7) (a) (i)  
 (ii)  
 (iii)  
 (iv)  
 (v)

Rule 561  
 Rule 563  
 Rule 564 (1)  
 Rule 564 (1)  
 Rule 564 (1)

## RULE 61.05 CONTINUED

(7) *Sale of Land*

- (a) A sale of land shall not be held under any Writ of Seizure or Sale until,
  - (i) the expiration of 6 months from the day on which the Writ is filed with the sheriff or, where the Writ has been withdrawn, from the day on which the Writ is re-filed;
  - (ii) after the sheriff has made a return of *no goods* in respect of all or part of the amount directed to be levied;
  - (iii) the sheriff has mailed a notice of sale to the execution creditor or his solicitor and to the execution debtor at his last known address at least 30 days preceding the sale;
  - (iv) the sheriff has published once in The Ontario Gazette at least 30 days preceding the sale and in a newspaper having a general circulation in the county in which the land is situate, an advertisement of sale once each week for two successive weeks, the last of such advertisements to be published not less than one week nor more than 3 weeks preceding the date of sale; and
  - (v) the sheriff has posted a notice of such sale in a conspicuous place on the property to be sold and in his office for at least 30 days preceding the sale.

## Rule 561

561. The sheriff shall not expose lands for sale under a writ of fieri facias or sell the lands within less than twelve months from the day on which the writ is filed with him or, after a withdrawal of the writ, within less than twelve months from the day on which the writ is refiled with him.

## Rule 563

563. A sale of lands shall not be had under any writ of fieri facias until after a return of nulla bona, in whole or in part, in the same action or matter by the sheriff of the same county, or in the case of a small claims court writ of execution, a return of nulla bona by the bailiff of the small claims court from which it was issued.

## Rule 564

564.—(1) Before the sale of lands under a writ of fieri facias, the sheriff shall,

- (a) forward a notice to the execution creditor or his solicitor and to the execution debtor by registered mail to his last known address at least one month preceding the sale;
- (b) publish once in The Ontario Gazette at least one month preceding the sale and in a newspaper having a general circulation in the county or district in which the lands are situate, an advertisement of sale, at least upon one day in each week for two successive weeks, the last of such advertisements to be published not less than one week nor more than three weeks preceding the date of the sale; and
- (c) for at least one month preceding the sale put up and continue a notice of such sale in a conspicuous place in his office.

NOTES

## RULE 61.05 (7) CONTINUED

- (b) Such notice and advertisement shall specify,
  - (i) the property to be sold;
  - (ii) the name of the plaintiff and defendant;
  - (iii) the time and place of the intended sale; and
  - (iv) the name of the debtor whose interest is to be sold.
- (c) Nothing in this rule shall be taken to prevent an adjournment of the sale to a future date without further notice or advertisement.
- (d) The advertisement in The Ontario Gazette of any lands for sale under a writ of fieri facias, during the currency of the writ shall be deemed to be sufficient commencement of the execution to enable the writ to be completed by a sale and conveyance of the lands after the writ has expired.

(b)  
(c)  
(d)

Rule 564 (2)  
Rule 564 (3)  
Rule 565

## RULE 564

(2) Such notice and advertisement shall specify,

- (a) the property to be sold;
- (b) the name of the plaintiff and defendant;
- (c) the time and place of the intended sale; and
- (d) the name of the debtor whose interest is to be sold.

(3) Nothing herein contained shall be taken to prevent an adjournment of the sale to a future day.

## Rule 565

565. The advertisement in The Ontario Gazette of any lands for sale under a writ of fieri facias, during the currency of the writ shall be deemed a sufficient commencement of the execution to enable the writ to be completed by a sale and conveyance of the lands after the writ has become returnable.

NOTES

61.06 (1)  
 (2)  
 61.07  
 61.08 (2)

Rule 567 (2)  
 Rule 568  
 Rule 580 (2)  
 Rule 578

**61.06 Writ of Possession****(1) Where Leave Is Required**

Unless otherwise provided by the judgment, a Writ of Possession shall not be issued without leave of the court, which may be obtained on a motion made without notice, but such leave shall not be given unless it is shown by affidavit that all persons in actual possession of the whole or any part of the real property have received sufficient notice of the proceeding in which such judgment was obtained to have enabled them to apply to the court for relief.

**(2) Duration**

A Writ of Possession remains in force for one year from the date of the judgment or order authorizing its issue, and where the Writ is filed with a sheriff, no notice of its expiration need be given by him.

**61.07 Writ of Delivery**

Where the property is not delivered up by the judgment debtor pursuant to a Writ of Delivery served upon him and cannot be found or taken by the sheriff, the judgment creditor may apply to a judge for an order directing the sheriff to take any other personal property of the judgment debtor not exceeding double the value of the property in question, to be kept by him pending any further order of the court to enforce obedience to the judgment.

**61.08 Enforcement by or against a Person not a Party**

(1) Where a judgment is made for the benefit of a person who is not a party, that person shall be entitled to enforce obedience to the judgment by the same process as if he were a party.

(2) Where a judgment may be enforced against a person who is not a party, that person shall be liable to the same process for enforcing obedience to the judgment as if he were a party.

**Rule 567**

(2) Unless otherwise provided by the judgment, a writ of possession shall not be issued except by leave of the court obtained on an ex parte application and such leave shall not be given unless it is shown by affidavit that all persons in actual possession of the whole or any part of the lands and tenements have received sufficient notice of the proceedings in which such judgment was obtained to have enabled them to apply to the court for relief or otherwise.

**Rule 568**

568. A writ of possession remains in force for one year from the date of the judgment or order authorizing its issue, and where the writ is filed with a sheriff, no notice of its expiration need be given by him.

**Rule 580**

(2) If the goods and property are not delivered up by the judgment debtor and cannot be found and taken by the sheriff, the judgment creditor may apply for an order directing the sheriff to take goods and chattels of the judgment debtor to double the value of the property in question to be kept until the further order of the court to enforce obedience to the judgment.

**Rule 578**

578. Any person not a party against whom obedience to a judgment may be enforced is liable to the same process and punishment as if he were a party.

**NOTES**

61.09 (1)  
 (2)  
 (3)  
 (4)  
 (5)  
 (6)

Rule 553 (2)  
 Rule 553 (3)  
 Rule 553 (4)  
 Rule 553 (1); 554  
 Rule 554  
 Rule 552

**61.09 Return by Sheriff**

(1) When a Writ has been executed or has expired, the sheriff shall endorse a memorandum to that effect on the Writ and return it to the office from which it was issued.

(2) The registrar to whom a Writ is returned shall endorse thereon the day and hour when it was returned to his office.

(3) Where a Writ has been withdrawn, the sheriff shall record the day and hour of such withdrawal and endorse a memorandum to that effect on the Writ and return it to the party who filed it or to his solicitor.

(4) Any party or his solicitor who has filed a Writ with a sheriff may require the sheriff by a demand in writing to report the manner in which he has executed the Writ.

(5) Where the sheriff fails to comply with a demand made under the preceding paragraph, within a reasonable time, the party serving the demand may apply to a judge for an order directing the sheriff to comply with such demand.

(6) Where a sheriff is required to make a report to the court with respect to any Writ filed with him, he shall forthwith file in the office from which the order was issued his Certificate (Form 61E) as to the manner in which he has executed the Writ.

**Rule 553**

553.—(1) The sheriff, when required to return a writ to the court, shall file the writ or his certificate under rule 552 in the office from which the order to return the writ was issued.

(2) When a writ has been executed or has expired the sheriff shall endorse a memorandum thereof on the writ and return it to the office from which it was issued.

(3) The officer to whom a writ is returned shall endorse thereon the day and hour when it was filed in his office.

(4) Where a writ has been withdrawn, the sheriff shall record the day and hour of such withdrawal and endorse a memorandum thereof on the writ and return it to the party who filed it or to his solicitor.

**Rule 554**

554. Where the party who delivered a writ or process to a sheriff to be executed, or any other person entitled to call for a return requires by a demand in writing the sheriff to return the writ, either by returning the writ to the court from which the writ issued or by granting a certificate under rule 552, the sheriff shall, within eight days, return the writ according to the terms of the requisition, and if he fails to do so the party serving the demand may apply to a judge for an order directing the sheriff to comply with such demand.

**Rule 552**

552. The sheriff to whom a writ is directed shall keep a record of all returns thereto and renewals thereof and shall give a certificate thereof when demanded, which certificate shall be deemed a return and shall be in Form 129.

NOTES

61.10(1)(a)

Rule 587(1)

## 61.10 Examination in Aid of Execution

(1) *Examination of Judgment Debtor*

- (a) A judgment creditor may, without an order, examine the judgment debtor as to,
- (i) his assets and income;
  - (ii) the means he had when the debt or liability in respect of which judgment has been obtained against him was incurred or, in the case of a judgment for costs only, at the time of the commencement of the cause or matter, and as to the property and means he still has of discharging the judgment;
  - (iii) the means he still has of discharging the judgment;
  - (iv) the disposal he has made of any property since contracting such debt or incurring such liability or, in the case of a judgment for costs only, since the commencement of the proceeding; and
  - (v) any and what debts are owing to him.

## Rule 587

587.—(1) A judgment creditor may, without an order, examine the judgment debtor upon oath annually before the proper officer of the county in which he resides touching his estate and effects and as to the property and means he had when the debt or liability that was the subject of the cause or matter in which judgment has been obtained against him was incurred, or, in the case of a judgment for costs only, at the time of the commencement of the cause or matter, and as to the property and means he still has of discharging the judgment, and as to the disposal he has made of any property since contracting such debt or incurring such liability, or, in the case of a judgment for costs only, since the commencement of the cause or matter, and as to any and what debts are owing to him.

**NOTES**(b)  
(c)Rule 588  
Rule 587(2)**RULE 61.10 CONTINUED**

- (b) Where the judgment is against a corporation, the judgment creditor may, without an order, examine any officer or director of the corporation as to,
  - (i) the names and addresses of the shareholders of the corporation;
  - (ii) the amount and particulars of the shares held or owned by each shareholder, and the amount paid thereon;
  - (iii) any and what debts are owing to the corporation;
  - (iv) the assets and income of the corporation;
  - (v) the disposal made by it of any property since contracting the debt or incurring the liability in respect of which the judgment was obtained or, in the case of a judgment for costs only, since the commencement of the proceeding.
- (c) No further examination shall be had without an order until the expiration of one year from the completion of the preceding examination.

**Rule 588**

588. Where the judgment is against a corporation, the judgment creditor may in like manner examine any of the officers of the corporation touching the names and addresses of the stockholders in the corporation, the amount and particulars of stock held or owned by each stockholder and the amount paid thereon, and as to what debts are owing to the corporation, and as to the estate and effects of the corporation, and as to the disposal made by it of any property since contracting the debt or liability in respect of which the judgment was obtained, or, in the case of a judgment for costs only, since the commencement of the cause or matter.

**RULE 597**

(2) No further examination shall be had without an order until the expiration of one year from the close of the preceding examination.

NOTES

(2) (a)  
 (b)  
 (c)

**RULE 61.10 CONTINUED****(2) Examination of Any Other Person**

- (a) The court may order any person to whom the debtor has made a transfer of his property, exigible under execution, since the date when the debt or liability in respect of which judgment has been obtained or incurred, or, where the judgment is for costs only, since the commencement of the proceeding, to submit to being examined as to,
  - (i) the disposal the debtor has made of any property since contracting the debt or incurring the liability; and
  - (ii) any and what debts are owing to the debtor.
- (b) Where the court is satisfied that there is reasonable ground for believing that a person or corporation is in possession of any property of the judgment debtor, exigible under execution, it may order such person or any officer of the corporation to submit to examination as to the assets and income of the judgment debtor.
- (c) Where any difficulty arises in or about the enforcement of any judgment, the court may make such order for the examination of any other person as may seem just.

Rule 589  
 Rule 590  
 Rule 591

**Rule 589**

589. The court may order any clerk or employee or former clerk or employee of the judgment debtor, or any person or the officer or officers of any corporation to whom the debtor has made a transfer of his property or effects, exigible under execution, since the date when the liability or debt that was the subject of the action in which judgment was obtained was incurred, or, where the judgment is for costs only, since the commencement of the cause or matter, to submit to being examined upon oath as to the estate and effects of the debtor, and as to the property and means he had when the debt or liability aforesaid was incurred, or, in the case of a judgment for costs only, at the date of the commencement of the cause or matter, and as to the property or means he still has of discharging the judgment, and as to the disposal he has made of any property since contracting the debt or incurring the liability, and as to any and what debts are owing to him.

**Rule 590**

590. Where the court is satisfied that there is reasonable ground for supposing that a person or corporation is in possession of any property of the judgment debtor exigible under execution, it may order such person or any officer of the corporation to attend and submit to examination touching the property and means of the judgment debtor.

**Rule 591**

591. Where a difficulty arises in or about the execution or enforcement of a judgment, the court may make such order for the attendance and examination of any party or person as seems just.

NOTES(3)  
(4)  
(5)Rules 592; 593  
Rule 594  
Rule 595**RULE 61.10 CONTINUED**

(3) Unless otherwise ordered or provided by this rule, the procedure prescribed by Rule 33 shall apply to the examination of any person liable to be examined under this rule.

(4) Where a judgment debtor neglects or refuses to attend for an examination under this rule or, where he attends and refuses to disclose his property or his transactions, or does not make satisfactory answers respecting the same or, if it appears from such examination that he concealed or disposed of his property in order to defraud his creditors or any of them, a judge may commit him for contempt.

(5) Where an officer of a corporation or any other person liable to be examined under this rule neglects or refuses to attend for his examination or attends and refuses to disclose any of the matters in respect of which he may be examined, a judge may order him to be committed for contempt.

**Rule 592**

592. A person liable to be examined under the preceding rules may be compelled to attend and testify, and to produce books and documents, in the same manner and subject to the same rules of examination, and the same consequences of neglecting to attend or refusing to disclose the matters in respect of which he may be examined, as in the case of a witness.

**Rule 593**

593. A person liable to be examined as a judgment debtor or as an officer of a corporation that is a judgment debtor need not be served with a subpoena, but may be served with an appointment, signed by the officer before whom he is to be examined, at least forty-eight hours before the time fixed for his examination. [Amended, O. Regs. 569/75, s. 5; 628/76, s. 16.]

**Rule 594**

594. Where the judgment debtor does not attend, does not allege a sufficient excuse for not attending, or, if attending, refuses to disclose his property or his transactions, or does not make satisfactory answers respecting the same, or, if it appears from such examination that he has concealed or made away with his property in order to defeat or defraud his creditors or any of them, the court may order the debtor to be committed to the common jail of the county or district in which he resides for a term of not more than twelve months, or that a writ of capias ad satisfacendum may be issued against the debtor, or, in case the debtor is at large upon bail, may make an order for his commitment to close custody, and the sheriff, on due notice of the order, shall forthwith take the debtor and commit him to close custody until he obtains an order allowing him to go out of close custody, on giving the necessary bond in that behalf, or until he is otherwise discharged in due course of law.

**Rule 595**

595. Where an officer of a corporation or other person liable to be examined does not attend and does not show a sufficient excuse for not attending, or, if attending, refuses to disclose any of the matters in respect of which he may be examined, the court may order him to be committed to the common jail of the county or district in which he resides for a term of not more than six months.

61.11 (2)  
 (3)  
 (4)  
 (5)

#### 61.11 Enforcement of Contempt Order

(1) A contempt order may be enforced by the issuance of a Warrant for Commitment (Form 61F) directed to all sheriffs and other peace officers in the Province of Ontario to apprehend the person against whom the contempt order has been issued and to detain him in custody until he can be brought before the court.

(2) Where a person is apprehended or detained in custody under a Warrant for Commitment, without obeying the judgment; then, upon the return of the sheriff that the person has been so apprehended or detained, the party seeking to enforce the judgment is entitled to apply to a judge for a Writ of Sequestration (Form 61G) against the property of the disobedient person.

(3) If a Warrant for Commitment cannot be executed against the person refusing or neglecting to obey the judgment by reason of his being out of the jurisdiction of the court or his having absconded or that, with due diligence, he cannot be found or, if for any other reason a judge is satisfied that a Warrant for Commitment ought to be dispensed with, leave may be granted for the issuance of a Writ of Sequestration against the property of the disobedient person.

(4) If a person refuses or neglects to pay a judgment for the payment of money, a judge may, upon the motion of the party seeking to enforce the judgment, at the expiration of the time limited for the payment thereof, make an order for the issuance of a Writ of Sequestration.

(5) Where it is made to appear that any person committed for contempt is in actual custody, a judge may grant him such relief as in the nature and circumstances may seem just, but any relief that may be granted to any such person does not relieve him for any civil liability.

Rule 571  
 Rule 572  
 Rule 573  
 Rules 575; 596

#### Rule 571

571. Where a person is taken or detained in custody under a writ of attachment, without obeying the judgment, then, upon the sheriff's return that the person has been so taken or detained, the party prosecuting the judgment is entitled upon motion to a writ of sequestration against the estate and effects of the disobedient person.

#### Rule 572

572. If an attachment cannot be executed against the person refusing or neglecting to obey the judgment by reason of his being out of the jurisdiction of the court or of his having absconded or that with due diligence he cannot be found or if in any other case the court thinks proper to dispense with a writ of attachment, an order may be granted for a writ of sequestration against the estate and effects of the disobedient person, and it is not necessary for that purpose to issue an attachment.

#### Rule 573

573. If a person who is ordered to pay money neglects to obey the judgment, the court may, upon the application of the party prosecuting the judgment, at the expiration of the time limited for performance, make an order for a writ of sequestration (Form 128).

#### Rule 575

575. Where a person has been committed to jail for contempt of court, there to be detained and imprisoned until he has purged his contempt, if it be made to appear that he is in actual custody under such commitment, the court may modify the order and limit the term of imprisonment or grant such other relief as in the nature and circumstances of the case seems just, but any relief that may be granted to any such person does not relieve him from any civil liability.

#### Rule 596

596. Where a person has been committed to jail, the court may limit the term of imprisonment or grant such other relief as seems just, but the order does not relieve such person from any civil liability to any other person.

NOTESRULE 61,11 CONTINUED

(6)

(7)

(8)

Rule 576

Rule 577

Rule 579

## Rule 576

576. Any judgment against a corporation wilfully disobeyed may be enforced by sequestration against the corporation or by attachment against the directors or other officers of the corporation.

## Rule 577

577. Any corporation or individual disobeying a judgment or guilty of any other contempt of court may be fined and such fine may be in lieu of or addition to punishment by attachment, committal or sequestration.

## Rule 579

579. If a mandamus granted in an action or otherwise, or a mandatory order, injunction or judgment for specific performance of a contract, is not complied with, the court, besides or instead of proceeding against the disobedient party for contempt, may direct that the act required to be done may be done so far as practicable by the party by whom the judgment has been obtained, or some other person appointed by the court, at the cost of the disobedient party, and, upon the act being done, the expenses incurred may be ascertained in such a manner as the court directs, and execution may issue for the amount so ascertained and for costs.

(6) Where any judgment against a corporation is wilfully disobeyed, it may be enforced by a Writ of Sequestration against the corporation or by a Warrant for Committal against the directors or officers of the corporation.

(7) Any person or corporation disobeying a judgment or a contempt order is liable to be fined in lieu of or in addition to having a contempt order enforced against him.

(8) Where any person refuses or neglects to comply with a judgment requiring him to do any act, other than the payment of money, or to abstain from doing any act, a judge may, instead of, or in addition to, granting a contempt order, order the act to be done at the expense of the disobedient party by the party who obtained the order or any other person appointed by the judge; and, upon the act being done and the expense thereof ascertained, a Writ of Seizure and Sale may issue against the disobedient party for the amount so ascertained and costs.

61.12(1)  
 (2)  
 (3)  
 (4) (a)  
 (b)

Rule 597 (1)  
 Rule 597 (1)  
 Rule 597 (3)  
 Rule 597 (1)  
 Rule 597 (2)

#### **61.12 Garnishment Proceedings**

(1) Where, on the motion of a judgment creditor, it is made to appear by affidavit that the judgment is unsatisfied and that some person is or will become indebted to the judgment debtor, the court may, by a Garnishee Order (Form 61H), order that all debts owing or accruing due from that person (hereinafter called the garnishee) to the judgment debtor, be attached to answer the judgment debt and that the garnishee do at a time and place therein named, attend and show cause why he should not pay into court the debt due or to become due from him to the judgment debtor, or so much thereof as is sufficient to satisfy the judgment debt and the claims of any other execution creditors.

(2) Notice of any such motion shall, unless dispensed with, be given to the judgment debtor.

(3) Where the garnishee is within Ontario, the order shall be served upon him.

(4) Where the garnishee is not within Ontario,

- (a) such an order may only be made where the debt to be attached is one for which the judgment debtor would be entitled to commence proceedings in Ontario against the garnishee;
- (b) Notice of the Garnishee Order (Form 61 I) and not the order itself shall be served on the garnishee.

#### **Rule 597**

597.—(1) The court, upon the ex parte application of the judgment creditor, upon affidavit stating that the judgment is unsatisfied and,

- (a) that some person within Ontario is indebted to the judgment debtor; or
- (b) that some person not within Ontario is indebted to the judgment debtor and that the debt to be attached is one for which such person might be sued in Ontario by the judgment debtor,

may order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor, shall be attached to answer the judgment debt and that the garnishee do at a time named show cause why he should not pay the judgment creditor or so much thereof as is sufficient to satisfy the judgment debt and the claims of any other execution creditors. Notice of the application to pay over shall, unless dispensed with, be given to the judgment debtor (Form 78).

(2) Where the garnishee is not within Ontario and is neither a British subject nor in British dominions, notice of the order and not the order itself shall be served (Form 79).

(3) Where a debt owing from a firm carrying on business within Ontario, but having members out of Ontario, is attached, service may be effected upon any person having control or management of the partnership business or any member of the firm within Ontario.

NOTES

(5)  
(6)  
(7)

Rule 598  
Rule 599  
Rule 600

**RULE 61.12 (CONTINUED)**

(5) The garnishee shall be deemed to be indebted although any debt sought to be attached has been assigned, charged or encumbered by the judgment debtor, if the assignment, charge or encumbrance is fraudulent as against creditors or is otherwise impeachable by them.

(6) The order from the time of service binds the debts attached.

(7) If the garnishee admits his liability, he may pay the amount admitted into court, and give notice of such payment to the judgment creditor.

**Rule 598**

598. The garnishee shall be deemed to be indebted, although any debt sought to be attached has been assigned, charged or encumbered by the judgment debtor, if the assignment, charge or encumbrance is fraudulent as against creditors or is otherwise impeachable by them.

**Rule 599**

599. The order from the time of service binds the debts attached.

**Rule 600**

600. If the garnishee admits his liability, he may pay the amount admitted into court, less \$3 for his costs of paying in, and give notice of such payment to the judgment creditor.

NOTES

61.12(8)  
(9)  
(10)

Rule 601(1)  
Rule 601(2)  
Rule 602

**RULE 61.12 CONTINUED**

(8) If the garnishee does not pay into court the amount due from him to the judgment debtor and does not dispute the debt due or claimed to be due from him to the judgment debtor or, if he does not appear upon notice to him, then the court may order payment into court of the debt.

(9) If the debt is not payable at the time the motion is heard, an order may be made for the payment thereof when it becomes payable.

(10) If the garnishee disputes his liability, the court may determine the dispute in a summary way or may direct the trial of an issue.

**Rule 601**

601.—(1) If the garnishee does not pay into court the amount due from him to the judgment debtor and does not dispute the debt due or claimed to be due from him to the judgment debtor, or, if he does not appear upon notice to him, then the court may order payment into court of the debt (Form 80).

(2) If the debt is not payable at the time of the attachment, an order may be made for the payment thereof when it becomes payable.

**Rule 602**

602. If the garnishee disputes his liability, the court may determine the dispute in a summary way or may order that an issue be tried in such manner as is directed.

## NOTES

(11)  
(12)  
(13)

Rules 604; 605  
Rule 603(1)  
Rule 606

## RULE 61.12 CONTINUED

(11) Where the debt claimed to be due or accruing from the garnishee is of an amount recoverable in a county court, or in a small claims court, the order shall require the garnishee to appear before the judge of the County Court, or of the Small Claims Court within whose jurisdiction the garnishee resides, on a day to be appointed in writing by such judge, and the garnishee shall be served with notice of the day appointed and all subsequent proceedings shall then be taken and carried on before such judge.

(12) Where a garnishee has notice of an assignment of a debt or claim thereto, or a charge thereon, he shall give notice thereof, and the court may order the assignee or the claimant to appear and state the nature and particulars of his claim.

(13) Payment into court by the garnishee pursuant to a garnishee order is a valid discharge to him as against the judgment debtor or any assignee or claimant of whose claim he has given notice, and who has been called upon to show cause by an order made under this sub-rule.

## Rule 604

604. Where the debt claimed to be due or accruing from a garnishee is of an amount recoverable in a county court, the order to show cause shall require the garnishee to appear before the judge of the county within which the garnishee resides, on a day and at a place within his county to be appointed by such judge, and the garnishee shall be served with notice of the day and place appointed and all subsequent proceedings shall then be taken and carried on before such judge.

## Rule 605

605.—(1) Where the debt claimed to be due or accruing from a garnishee is of an amount recoverable in a small claims court, the order to show cause shall require the garnishee to appear before the judge of the small claims court within whose jurisdiction the garnishee resides, on a day to be appointed in writing by such judge, and the garnishee shall be served with notice of the day appointed.

(2) The proceedings shall thereafter be carried on before the judge though the garnishee summons had been issued out of the small claims court, and all proceedings may thereafter be carried on in the small claims court, and execution may be issued in the division court to enforce any order or judgment made.

## Rule 603

603.—(1) Where a garnishee has notice of an assignment of the debt or a claim thereto or charge thereon, he shall give notice thereof, and the court may order the assignee or the claimant to appear and state the nature and particulars of his claim.

## Rule 606

606. Payment into court or under an order by the garnishee is a valid discharge to him as against the judgment debtor or any assignee or claimant of whose claim he has given notice and who has been called upon to show cause under the preceding rules.

## APPEALS

## RULE 62 APPEALS TO AN APPELLATE COURT

## 62.01 Commencement of Appeals

(1) Unless otherwise provided by any statute, or by these rules, an appeal to an appellate court, including a motion for a new trial, shall be made by Notice of Appeal (Form 62A) served upon all parties whose interests are sought to be affected by the appeal, within 30 days after the date of the judgment appealed from.

(2) The Notice of Appeal shall state the relief sought and shall set forth the grounds of appeal.

(3) The appeal shall be set down for hearing by filing in the office of the Registrar the Notice of Appeal, with proof of service, within 10 days after such service. At the same time, there shall be left with the Registrar either proof that copies of the evidence required for use upon the appeal have been ordered, or an undertaking by the appellant or his solicitor to order the evidence not agreed to be omitted within 30 days after the filing of the Notice of Appeal. Proof that the evidence has been ordered in compliance with such undertaking shall be filed within 5 days of the time it is so ordered.

*Note: In divorce proceedings, the time for appeal is prescribed by s. 17 of the Divorce Act (Canada) 1967-68, c. 24.*

## 62.02 Amendment of Grounds of Appeal

(1) The Notice of Appeal may be amended, without leave, by the appellant serving on each of the parties on whom the Notice of Appeal was served a Supplementary Notice of Appeal (Form 62B) and by filing it with proof of service before the appeal is perfected.

(2) Except with the leave of the court hearing the appeal, no grounds other than those stated in the Notice of Appeal or any Supplementary Notice may be relied upon by the appellant at the hearing.

Rule 497b(1)  
Rule 497b(2)  
Rules 497(a); 498(1)

## Rule 497b

497b.—(1) Unless otherwise provided, an appeal to an appellate court, including an application by way of stated case or a motion for a new trial, shall be made by notice of motion served upon all parties whose interests are sought to be affected by the appeal within 15 days after the date of the judgment or order appealed from (Form 130).

(2) The notice shall state the relief asked and shall set forth the grounds of appeal and no other grounds may be argued except by leave of the court.

(3) An interlocutory motion to an appellate court shall be upon notice and shall be set down at least two days before the return day, at which time sufficient copies of all necessary papers shall be supplied for the use of the court. [New, O. Reg. 115/72, s. 7.]

## Rule 497a

497a. Any document pertaining to a proceeding to be heard by the Divisional Court may be filed in the office of, delivered to or lodged with any local registrar of the Supreme Court and shall thereupon be deemed to have been filed with, delivered to or lodged with the Registrar of the Supreme Court. [New, O. Reg. 115/72, s. 7.]

## Rule 498

498. In all cases, other than an appeal from an interlocutory order,

(1) the appeal shall be set down for hearing by filing in the office of the Registrar the notice of motion and proof of service within ten days after service. Not later than forty days after the appeal has been set down, there shall be left with the Registrar proof that the copies of the evidence not agreed to be deleted pursuant to rule 498A and required for use upon the appeal have been ordered;

NOTES**APEALS TO AN APPELLATE COURT      RULE 62****62.03 Cross-Appeals**

Where a respondent intends to contend that the judgment appealed against should be varied, he may, within 15 days after a Notice of Appeal has been served upon him, serve a Notice of Cross-Appeal (Form 62C) upon all parties whose interests are sought to be affected, and file such notice, with proof of service, within 5 days after service.

**62.04 Respondent's Notice of Contentions**

(1) A respondent who has not cross-appealed but who intends to contend on the appeal that,

- (a) the judgment appealed from should be affirmed on grounds other than those given by the court appealed from; or
- (b) in the event that the appeal is allowed in whole or in part, he is entitled to other or different relief or disposition than that given by the judgment appealed from,

shall within 15 days from the service of the Notice of Appeal serve on the appellant and any other party whose interests may be affected thereby and within 5 days thereafter file with the Registrar, with proof of service, a Notice of Contentions (Form 62D) specifying the grounds thereof.

**Rule 503**

503. Where a respondent intends to appeal upon his claim or counter-claim in the action or to contend that the decision appealed against should be varied, he shall, within fifteen days after the date of the judgment or order appealed from or within five days after a notice of appeal has been served upon him, whichever is later, serve a notice of cross-appeal upon all interested parties and forthwith file such notice with proof of service. The omission to give such notice does not diminish the power of the court but may in the discretion of the court be ground for an adjournment of the appeal or for a special order as to costs. [Amended, O. Reg. 115/72, s. 7.]

NOTES**62.05 Certificate of Appellant and Respondent or Agreement**

(1) In order to minimize, where possible, the reproduction of exhibits and the transcription of evidence for use on an appeal, the appellant shall serve on each respondent, together with the Notice of Appeal, a Certificate of Appellant (Form 62E) setting forth those exhibits or parts thereof (by number) and of the evidence (by witness) that he suggests are not required for the appeal.

\* (2) Within 15 days after receipt of the Certificate of Appellant, a respondent shall serve on the appellant a Certificate of Respondent (Form 62F) either confirming the Certificate of Appellant or setting out any additions to, or deletions therefrom. A respondent who fails to do so within the time prescribed shall be deemed to confirm the Certificate of Appellant.

(3) In lieu of complying with paragraph (1) of this subrule, the parties may file an agreement as to contents of the Appeal Books and the evidence to be transcribed.

(4) Upon being served with a Certificate of Respondent by each respondent or after the time for such service has expired, or upon the filing of an agreement as to the contents of the appeal book and the evidence to be transcribed, the appellant shall order in writing all the evidence that has not been agreed to be omitted. When the party has ordered all the evidence, he shall forthwith modify such order in writing to comply with the certificates or agreement.

(5) When the evidence has been transcribed, the court reporter shall forthwith notify all parties and the Registrar.

(6) The court may impose cost sanctions where unnecessary evidence or exhibits were transcribed or reproduced.

**Rule 498a**  
498a.—(1) In order to minimize, where possible, the reproduction of exhibits and the transcription of evidence for use on an appeal, the appellant shall, within twenty days following the filing of the notice of appeal, serve on each respondent a list, certified in accordance with Form 13A, setting forth those portions of the exhibits by number and of the evidence by witness that it is suggested be deleted from the case on appeal;

\* (2) within ten days after receipt of the list of the appellant, the respondent, or respondents, as the case may be, shall either serve on all other parties a list certified in accordance with Form 13A confirming the appellant's list or serve on all other parties a list certified in accordance with Form 13A of any additions to, or deletions from, the appellant's list of exhibits and evidence which may be necessary for the appeal. A respondent who does not either confirm the appellant's list or serve his own list in accordance with Form 13A within ten days shall be deemed to confirm the list submitted by the appellant;

(3) upon receiving the list from the respondent, or respondents, as the case may be, or if the ten days referred to in rule 498A(2) have expired, the appellant, subject to rule 498(4) shall order all of the evidence not agreed to be deleted and shall include in the appeal book all exhibits not agreed to be deleted;

(4) in the disposition of the costs of the appeal, the Court may have regard to the certificates referred to in this rule. [New, O. Reg. 520/78, s. 22a.]

**Rule 498** (2) the appellant shall, within thirty days after setting down the appeal, or within fifteen days after the evidence is ready, whichever is later, cause to be filed with the Registrar the record, exhibits and evidence, not agreed to be deleted, the certificate or certificates, as the case may be, referred to in rule 498A, and proof of service of the appellant's Statement, referred to in rule 601, and all such other papers as are necessary for the hearing of the appeal and lodge with the Registrar, in the case of an appeal to the Court of Appeal, five copies and, in the case of an appeal to the Divisional Court, three copies, of the appellant's Statement referred to in rule 601 and of an appeal book for the use of the court, each appeal book containing in the order shown:

- (I) an Index,
- (II) the notice of appeal,
- (III) the pleadings,
- (IV) the judgment or order appealed from,
- (V) the reasons for judgment,
- (VI) such of the exhibits filed as are documents or parts of documents and which are material to the hearing of the appeal and which have not been agreed to be deleted in order of the dates of such documents; provided, however, that documents having common characteristics may be arranged in separate groups in order of their dates, if any,
- (VII) the evidence when not transcribed by a reporter,
- (VIII) the certificates referred to in rule 498A,

NOTES

62.06 (1)  
(2)

Rule 498 (2)  
Rule 498 (4)

RULE 498**62.06 Perfecting Appeals**

(1) The appellant shall, within 30 days after filing the Notice of Appeal, or within 15 days after the evidence has been transcribed, whichever is later, cause to be forwarded to the Registrar the trial record and the original exhibits and shall file with the Registrar the certificates or agreement referred to in Rule 62.05 and shall deposit with the Registrar in the case of an appeal to the Court of Appeal five copies and, in the case of an appeal to the Divisional Court, three copies of the following:

- (a) the appeal books;
- (b) the evidence; and
- (c) the Appellant's Statement.

(2) Where compliance with the rules as to the appeal books or transcripts of evidence would cause undue expense or delay, a judge of the appropriate appellate court may give special directions.

(2) the appellant shall, within thirty days after setting down the appeal, or within fifteen days after the evidence is ready, whichever is later, cause to be filed with the Registrar the record, exhibits and evidence, not agreed to be deleted, the certificate or certificates, as the case may be, referred to in rule 498A, and proof of service of the appellant's Statement, referred to in rule 601, and all such other papers as are necessary for the hearing of the appeal and lodge with the Registrar, In the case of an appeal to the Court of Appeal, five copies and, in the case of an appeal to the Divisional Court, three copies, of the appellant's Statement referred to in rule 601 and of an appeal book for the use of the court, each appeal book containing in the order shown:

- (i) an Index,
- (ii) the notice of appeal,
- (iii) the pleadings,
- (iv) the judgment or order appealed from,
- (v) the reasons for judgment,
- (vi) such of the exhibits filed as are documents or parts of documents and which are material to the hearing of the appeal and which have not been agreed to be deleted in order of the dates of such documents; provided, however, that documents having common characteristics may be arranged in separate groups in order of their dates, if any,
- (vii) the evidence when not transcribed by a reporter,
- (viii) the certificates referred to in rule 498A,

(ix) any other document material to the hearing of the appeal;

(4) where compliance with the rules as to the appeal books, or transcripts of evidence, would cause undue expense or delay, a Judge of the Appellate Court may give special directions.

(3)

Rule 498(3), (5)

## RULE E2.06 CONTINUED

(3) As soon as the record, exhibits and the certificates or agreement referred to in Rule 62.05 have been filed, and the appeal books, the evidence and the Appellant's Statement have been deposited with the Registrar, with proof of service on all other parties to the appeal, the appeal shall be deemed to be perfected and,

- (a) not later than 5 days after the appeal is perfected, the appellant shall serve all other parties to the appeal with a notice of the date upon which it was so perfected, and file such notice with proof of service; and
- (b) subject to clause (c), appeals to the Court of Appeal perfected on or before the last day of any month shall be placed on the list of cases to be heard in the second month thereafter in which appeals are to be heard; and
- (c) appeals to the Court of Appeal perfected in June shall be placed on the list of cases to be heard in September; and
- (d) an appeal to the Divisional Court shall, on the 15th day after it is perfected, be placed on the list of cases to be heard at the appropriate place of hearing.

## RULE 498 CONTINUED

(3) the appellant shall, contemporaneously with the lodging of the appeal book with the Registrar, serve each of the other parties with a copy thereof, together with a copy of the evidence not agreed to be deleted;

- (5) as soon as the record, exhibits, proof of service of the appellant's Statement and the certificates referred to in rule 498A have been filed, and the appeal book and evidence not agreed to be deleted have been lodged with the Registrar, the appeal shall be deemed to be perfected, and
  - (i) the Registrar shall forthwith notify all parties to the appeal, by mail, of the date upon which the appeal was so perfected, and
  - (ii) subject to clause (iii) appeals to the Court of Appeal perfected on or before the last day of any month shall be placed on the list of cases to be heard in the second month thereafter in which appeals are to be heard, and
  - (iii) appeals to the Court of Appeal perfected in June shall be placed on the list of cases to be heard in September, and
  - (iv) an appeal to the Divisional Court shall, on the fifteenth day after it is perfected, be placed on the list of cases to be heard at the appropriate place of hearing. (Amended. O. Regn. 116/72, s. 7; 457/75, s. 3; 106/75, s. 25; 529/77, s. 22.)

NOTES**62.07 Appeal Books**

(1) The appeal books shall contain, in the following order:

- (a) an index;
- .
- (b) the Notice of Appeal and any Supplementary Notice of Appeal, Notice of Cross-Appeal or Notice of Contentions;
- (c) the pleadings;
- (d) the judgment appealed from;
- (e) the reasons for judgment;
- (f) such of the exhibits filed as are documents or parts of documents and which are material to the hearing of the appeal in order of the dates of such documents; provided, however, that documents having common characteristics may be arranged in separate groups in order of their dates;
- (g) any affidavit evidence;
- (h) the certificates referred to in Rule 62.05, or an agreement as to the contents of the Appeal Books and Evidence;
- (i) any order made in respect of the conduct of the appeal;
- (j) any other document relevant to the hearing of an appeal.

(2) within ten days after receipt of the list of the appellant, the respondent, or respondents, as the case may be, shall either serve on all other parties a list certified in accordance with Form 130A confirming the appellant's list or serve on all other parties a list certified in accordance with Form 130A of any additions to, or deletions from, the appellant's list of exhibits and evidence which may be necessary for the appeal. A respondent who does not either confirm the appellant's list or serve his own list in accordance with Form 130A within ten days shall be deemed to confirm the list submitted by the appellant;

NOTES

(2) The Appeal Books may, at the option of the appellant, be completed in compliance with the Rules of the Supreme Court of Canada relating to an appeal case.

(3) The solicitor or the appellant shall include in the Appeal Books a certificate signed by him, or someone authorized by him, certifying to the completeness and legibility of the contents and the Registrar may refuse to accept the Appeal Books if they do not comply with these rules or are not readily legible.

NOTES**62.08 Appellant's Statement**

A statement signed by counsel for the appellant or some person specifically authorized by counsel entitled "Appellant's Statement" shall state who is appealing, the court appealed from and the result in the court below, and shall consist of four parts and schedules as follows:

**Part I.** A concise summary of all relevant facts with such reference to the evidence by page and line as may be necessary.

**Part II.** A concise statement setting out clearly and particularly in what respect the judgment appealed from is alleged to be erroneous.

**Part III.** A concise statement of the law relied upon in support of each issue raised in Part II, including the cases and authorities intended to be cited relating to that issue.

**Part IV.** A concise statement of the order that the appellate court will be asked to make, including any special disposition with regard to costs.

Schedule A. List of authorities referred to.

Schedule B. The text of all relevant provisions of Statutes or Regulations (or copies of the complete Statute or Regulation may be filed and served with the Statement).

**Rule 501**

501.—(1) In an appeal to an appellate Court every appellant shall lodge with the Registrar, in an appeal to the Court of Appeal five, and in an appeal to the Divisional Court three, legible copies of a statement signed by counsel or by some person specifically authorized by counsel, entitled "Appellant's Statement" containing, under numbered parts, the following:

- I. who is appealing, the court appealed from, and the result in the court below;
- II. a concise summary of the facts relevant to the issues on the appeal, with such reference to the evidence by page and line as may be necessary;
- III. the issues to be raised, each issue being followed by a concise statement of the law, including cases and authorities, relating to that issue;
- IV. a statement of the order that the appellate court will be asked to make.

**62.09 Respondent's Statement**

(1) Every respondent shall deposit with the Registrar in the case of an appeal to the Court of Appeal five copies, and in the case of an appeal to the Divisional Court, three copies, and shall serve upon the appellant and all other parties to the appeal a statement signed by counsel for the respondent or by some person specifically authorized by counsel entitled "Respondent's Statement" which shall consist of four parts and schedules as follows:

- Part I.** A statement of the facts in the appellant's summary of relevant facts which the respondent accepts as correct and those facts with which he disagrees and a concise summary of any additional facts relied upon with such reference to the evidence by page and line as may be necessary.
- Part II.** The position of the respondent with respect to the issues raised by the appellant, each issue being followed by a concise statement of the law bearing on the issue, including case and authorities, relating to that issue.
- Part III.** Any additional issues intended to be raised by the respondent, each issue being followed by a concise statement of the law bearing on the issue, including cases and authorities relating to that issue.
- Part IV.** A concise statement of the order that the appellate court will be asked to make, including any special disposition with regard to costs.

**Schedule A.** List of authorities referred to.

**Schedule B.** The text of all relevant provisions of Statutes or Regulations (or copies of the complete Statute or Regulation may be filed and served with the Statement)

**RULE 501**

(2) Every respondent shall lodge with the Registrar a similar number of legible copies of a statement, signed by counsel, or by some person specifically authorized by counsel, entitled "Respondent's Statement" containing, under numbered parts, the following:

- I. (a) A statement of the facts in the appellant's summary of the relevant facts which the respondent accepts as correct; and those facts with which he disagrees;

(2)

(3)

(4)

Rule 501(6)

Rule 501(4)

Rule 501(5)

RULE F2.09 CONTINUED

(2) Where a respondent has, pursuant to Rule 62.03, given notice of cross-appeal,

- (a) his statement as an appellant by cross-appeal shall be delivered with or incorporated in his Respondent's Statement; and
- (b) the appellant shall deliver his statement as a respondent by cross-appeal within 5 days from the receipt of the Respondent's Statement.

(3) In an appeal to the Court of Appeal a Respondent's Statement shall be served and deposited with proof of service upon each of the other parties to the appeal not later than the 20th day of the month preceding the month in which the appeal is listed to be heard.

(4) In an appeal to the Divisional Court the Respondent's Statement shall be served and deposited with proof of service not later than 14 days after the appeal is perfected.

(4) In an appeal to the Court of Appeal a Respondent's Statement shall be lodged and served upon each of the other parties to the appeal not later than the 20th day of the month preceding the month in which the appeal is listed to be heard.

(5) In an appeal to the Divisional Court the Respondent's Statement shall be lodged and served within or not later than fourteen days after the appeal is perfected.

(6) Where a respondent has, pursuant to rule 503, given notice of cross-appeal,

- (a) his statement as an appellant by cross-appeal shall be delivered with or incorporated in his Respondent's Statement, and
- (b) the appellant shall deliver his statement as a respondent by cross-appeal within five days from the date on which the Respondent's Statement is due.

NOTES**62.10 Failure to Perfect Appeal**

(1) If an appeal to an appellate court is not perfected within the time prescribed or allowed, the respondent may apply to the Registrar, on 10 days notice to the appellant, to have the appeal dismissed as an abandoned appeal, and, if he is also an appellant by cross-appeal, he may move before a judge of the appellate court for directions in respect of the cross-appeal.

(2) If the appellant does not order the evidence in compliance with his undertaking and file proof thereof within the required time, the Registrar, on 10 days notice to the appellant, may order that the appeal be dismissed as an abandoned appeal, unless otherwise ordered by a judge of the appropriate appellate court.

(3) If the appeal is not perfected by the appellant within 30 days after notification by the court reporter that the evidence has been transcribed, the Registrar may give notice to the appellant that, unless the appeal be perfected within 10 days thereafter, the appeal will be dismissed as an abandoned appeal.

(4) If the appeal is not perfected within the 10 days from the giving of either of such notices or within such further time as is allowed by a judge of the appropriate appellate court, the Registrar shall dismiss the appeal as an abandoned appeal with costs to be taxed and shall issue a Certificate of Dismissal (Form 62G.)

**Rule 502**

502.—(1) If an appeal to an appellate court is not perfected as required within the time prescribed or allowed the respondent may give ten clear days notice to the appellant of an application to the Registrar to have the appeal dismissed as an abandoned appeal, and if he is also an appellant by cross-appeal, he may move before a Judge of the appellate court for directions in respect of the cross-appeal. [Amended, O. Reg. 437/73, s. 5.]

(2) If the appeal is not perfected by the appellant within one year of the filing of the notice of appeal or within such longer time as has been fixed by a judge of the appropriate appellate court or an appellant has not filed copies of the evidence within 30 days after notification by the court reporter that the evidence has been transcribed, the Registrar may give notice to the appellant that, unless the appeal be perfected within ten days thereafter, the appeal will be dismissed as an abandoned appeal. [Amended, O. Reg. 520/78, s. 24.]

(3) If the appeal is not perfected within the ten days from the giving of either of such notices or within such further time as is allowed by a judge of the appellate court the Registrar shall dismiss the appeal as an abandoned appeal with costs to be taxed and shall issue a certificate accordingly (Form 13). [Amended, O. Reg. 415/72, s. 7.]

**Rule 502a**

502a.—(1) If the appellant has not left with the Registrar proof that the copies of the evidence not agreed to be deleted pursuant to rule 498A have been ordered within the time prescribed by rule 498 (1), or within such longer time as has been fixed by a Judge of the Appellate Court, the respondent may give ten clear days' notice to the appellant of an application to the Registrar to have the appeal dismissed as an abandoned appeal, and, if he is also an appellant by cross-appeal, he may move before a Judge of the Appellate Court for directions in respect of the cross-appeal;

(2) If the appellant has not left with the Registrar such proof within the ten days from the giving of such notice, or within such further time as is allowed by a Judge of the Appellate Court, the Registrar shall dismiss the appeal as an abandoned appeal with costs to be taxed and shall issue a certificate accordingly. [New, O. Reg. 529/78, s. 25.]

**APPEALS TO AN APPELLATE COURT RULE 62****NOTES****62.11 Appellant May Discontinue**

(1) An appellant may discontinue his appeal by filing with the Registrar and serving upon the respondent a notice, signed by the appellant or his solicitor, stating that he has so discontinued it and thereupon the appeal is at an end, and the respondent is entitled to his costs of the appeal unless within 15 days the respondent applies to a judge of the appellate court for directions.

(2) Where an appeal is discontinued or abandoned, a respondent who has cross-appealed may deliver a Notice of Election to Proceed (Form 62H) within 15 days thereafter, in which case he shall also file an undertaking to pay for the evidence not already prepared. In default of so doing, the cross-appeal shall be deemed to be discontinued without costs unless otherwise ordered by a judge of the appropriate appellate court.

**62.12 Appeals from a Final Judgment or Order of a Master, Local Judge, Local Master or other Officer.**

A person affected by a final judgment or order of a master, local judge, local master or other officer may appeal therefrom to the Divisional Court and the provisions of Rule 62 in so far as they apply to an appeal to the Divisional Court shall apply to any such appeal.

**\* 62.13 Motion for Leave to Appeal from any Judgment or Order of the Divisional Court**

(1) An appeal to the Court of Appeal from any judgment or an order of the Divisional Court shall not lie unless leave to appeal shall have been granted by the Court of Appeal.

(2) The motion for leave shall be made within 15 days and returnable within 30 days after the date of the judgment or order sought to be appealed from.

(3) If leave be granted, the Notice of Appeal shall be served and the appeal set down within 7 days after the granting of leave.

(4) Except as provided in this sub-rule, the provisions of Rule 62 shall apply to any such appeal.

**Rule 515**

515. A person affected by a final judgment or order of the Master, local judge, local master or other officer may appeal therefrom to the Divisional Court and such appeal shall be brought within the time and upon the like notice and proceedings as in cases of appeals to an appellate court. [Amended, O. Reg. 115/72, s. 14.]

**\* Rule 499b**

499b.—(1) An appeal to the Court of Appeal from any judgment or order of the Divisional Court shall not lie unless leave to appeal shall have been granted by the Court of Appeal.

(2) An application for leave to appeal shall be made by notice of motion served upon all parties within 15 days after the date of the judgment or order sought to be appealed from and returnable within 30 days after the date of the judgment or order sought to be appealed from or such further time as is allowed by the court hearing the application for leave to appeal. [Amended, O. Reg. 628/76, s. 14.]

(3) If leave be granted a notice of appeal shall be served and set down within seven days thereafter.

(4) Except as provided in sub-rule (2), rules 497b and 498 apply. [O. Reg. 115/72, s. 7.]

63

63.01 (1)  
(3)Rule 514(1)  
Rules 220; 514(2)

## APPEALS

RULE 63 APPEALS FROM INTERLOCUTORY JUDGMENTS  
OR ORDERS IN THE SUPREME COURT63.01 Appeal from an Interlocutory Judgment or Order of a Master,  
Local Judge, Local Master or other Officer

(1) Except in the case of an interim order in respect of any claim made in a divorce proceeding, a person affected by an interlocutory judgment or order of a master, local judge, local master or other officer may appeal therefrom to a judge of the High Court.

(2) An appeal may be made notwithstanding that the judgment or order was in respect of a proceeding as to which the master, local judge, local master or other officer had jurisdiction only by consent.

(3) The appeal shall be on notice setting out the grounds of the appeal, served within 7 days and returnable within 14 days after the judgment or order was made.

## Rule 514

514.—(1) Except in the case of an interim order for corollary relief under the Divorce Act (Canada), a person affected by an interlocutory judgment or order made by the Master, local judge, local master or other officer, may appeal therefrom to a judge. [Amended, O. Reg. 520/78, s. 26.]

(2) The appeal shall be by motion, on notice served within four days and returnable within ten days after the decision complained of provided that an appeal brought under Rule 239 may be returnable at the next sittings of the court held pursuant to the said rule where such sittings commences more than four days after the decision appealed from, or if four days or less, at the next following sittings.

(3) The appeal is not a stay of proceedings unless ordered by a judge or by the officer whose decision is complained of. [Amended, O. Reg. 115/72, s. 12.]

(4) [Revolved, O. Reg. 106/75, s. 28.]

## Rule 220

220. Every notice of motion by way of appeal shall specify the grounds intended to be argued.

## NOTES

## 63.02 Record

(1) Where an appeal is taken to a judge of the High Court, the appellant shall, on or before the day prior to the hearing of the appeal, transmit to the registrar for the use of the court and furnish to each respondent a copy of the record containing copies of documents in the following order:

- (a) An index;
- (b) The Notice of Appeal;
- (c) The judgment or order appealed from and the reasons for the decision, if any;
- (d) Such of the material filed in the proceeding as is necessary for the due hearing of the appeal; and
- (e) A concise statement, without argument, of the facts and law relied on by the appellant.

(2) In all such cases each respondent shall, on or before the day prior to the hearing of the appeal, transmit to the registrar one copy for the use of the court and furnish to each of the other parties one copy of a concise statement, without argument, of the facts and law relied on by him.

(3) A judge of the High Court may dispense with compliance with this sub-rule either in whole or in part.

## Rule 238

238.—(1) In all cases, except as hereinafter provided, where an appeal is taken to a judge of the Supreme Court and in all cases where a motion is made under sub-rules (1), (2), (7), (9) or (10) of rule 607, rules 611, 612 or 629, the appellant or the applicant, as the case may be, shall on or before the day prior to the hearing of the appeal or motion, transmit to the Registrar sufficient copies for the use of the court and furnish to each respondent a record containing copies of documents in the following order:

- (A) 1. An Index.
  - 2. The notice of appeal or originating notice.
  - 3. In the case of an appeal, the judgment or order appealed from and the reasons for judgment, if any.
  - 4. Such of the material as is necessary for the due hearing of the appeal or motion.
  - (B) A concise statement, without argument, of the facts and law relied on by the appellant or applicant.
- (2) In all such cases each respondent shall on or before the day prior to the appeal or motion coming on for hearing,
- (a) furnish to the appellant or applicant two copies of any new material filed by him for use on the appeal or motion; and
  - (b) transmit to the Registrar sufficient copies for the use of the court and furnish to each of the other parties one copy of
    - (i) any new material filed by him for use on the appeal or motion and
    - (ii) a concise statement, without argument, of the facts and law relied on by him.

(3) This rule does not apply to appeals under sub-rule (2) of rule 499 or rule 514 nor to appeals from a taxing officer.

(4) A judge may dispense with compliance with this rule either in whole or in part. [Amended, O. Reg. 115/72, s. 6.]

**63.03 Motion for Leave to Appeal from an Interlocutory Judgment or Order of a Judge of the High Court**

(1) An appeal from an interlocutory judgment or order of a judge of the High Court, other than an appeal from an interim order in respect of any claim made in a divorce proceeding, shall not lie unless leave to appeal therefrom has been obtained from a judge of the High Court other than the judge appealed from.

(2) The motion for leave shall be made within 7 days from the making of the judgment or order appealed from or such further time as is allowed by the judge hearing the motion for leave to appeal.

(3) Leave to appeal shall not be granted unless,

(a) there is a conflicting decision by another judge or court upon the matter involved in the proposed appeal and it is, in the opinion of the judge hearing the motion, desirable that leave to appeal be granted; or

(b) there appears to the judge hearing the motion good reason to doubt the correctness of the order in question and the appeal involves matters of such importance that, in his opinion, leave to appeal should be granted.

(4) The judge granting leave shall briefly state his reasons in writing.

**Rule 499**

499.—(1) An appeal from an interlocutory judgment or order of a judge of the High Court, other than an appeal from an interim order for corollary relief under the Divorce Act (Canada), shall not lie unless leave to appeal therefrom has been obtained from a judge of the High Court other than the judge appealed from. [Amended, O. Reg. 520/78, s. 23.]

(2) The application for leave shall be made within one week from the pronouncing of the order appealed from, or such further time as is allowed by the judge hearing the application for leave to appeal.

(3) Leave to appeal shall not be granted unless,

(a) there are conflicting decisions by a judge or court upon the matter involved in the proposed appeal and it is in the opinion of the judge desirable that an appeal be allowed; or

(b) there appears to the judge hearing the application to be good reason to doubt the correctness of the decision or order in question and the appeal involves matters of such importance that in the opinion of the judge leave to appeal should be given.

(4) The judge granting leave shall briefly state his reasons in writing.

(5) If leave be granted, the notice of appeal shall be served and the appeal set down within seven days after the granting of leave and appeal books complying with the requirements of rule 498(2) shall be delivered within seven days thereafter.

(6) Except as provided in sub-rules (2) and (5), rules 497b and 498 apply. [Amended, O. Regs. 116/72, s. 7; 933/78, s. 5.]

NOTES

**RULE 63.03 CONTINUED**

(5) If leave be granted, the appeal shall be to the Divisional Court and the Notice of Appeal shall be served and the appeal set down within 7 days after the granting of leave. Three copies of the Appeal Book, prepared in compliance with Rule 62.07, shall be delivered within 7 days thereafter, but, in the case of an appeal from an interlocutory order, the provisions of Rules 62.06 to 62.09 inclusive shall not apply.

(6) Except as provided in this sub-rule, the provisions of Rule 62 in so far as they are applicable to an appeal to the Divisional Court shall apply to an appeal from an interlocutory judgment or order of a judge of the High Court.

**Rule 499**

499.—(1) An appeal from an interlocutory judgment or order of a judge of the High Court, other than an appeal from an interim order for consolatory relief under the Divorce Act (Canada), shall not lie unless leave to appeal therefrom has been obtained from a judge of the High Court other than the judge appealed from. [Amended, O. Reg. 520/78, s. 23.]

(2) The application for leave shall be made within one week from the pronouncing of the order appealed from, or such further time as is allowed by the judge hearing the application for leave to appeal.

(3) Leave to appeal shall not be granted unless,

(a) there are conflicting decisions by a judge or court upon the matter involved in the proposed appeal, and it is in the opinion of the judge desirable that an appeal be allowed, or

(b) there appears to the judge hearing the application to be good reason to doubt the correctness of the decision or order in question and the appeal involves matters of such importance that in the opinion of the judge leave to appeal should be given.

(4) The judge granting leave shall briefly state his reasons in writing.

(5) If leave be granted, the notice of appeal shall be served and the appeal set down within seven days after the granting of leave and appeal books complying with the requirements of rule 498(2) shall be delivered within seven days thereafter.

(6) Except as provided in sub-rules (2) and (5), rules 497b and 498 apply. [Amended, O. Regs. 115/72, s. 7; 933/79, s. 5.]

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64.01  
64.02(1)  
(2)

## APPEALS

## RULE 64 STAY OF PROCEEDINGS PENDING APPEAL

## 64.01 Where Proceedings are Stayed Without Order

(1) Except in a case where the judgment appealed from is an interlocutory judgment or awards an injunction, a mandamus, maintenance under the *Divorce Act (Canada)* or support under *The Family Law Reform Act 1978*, or the custody of or access to a child,

- (a) all proceedings to enforce the judgment and all proceedings pursuant to the judgment shall be stayed for a period of 30 days, unless otherwise ordered by the judge or officer presiding at the trial or hearing of the proceeding;
- (b) on the serving and filing of a Notice of Appeal, with proof of service, all proceedings to enforce the judgment and all proceedings pursuant to the judgment shall be stayed pending the disposition of the appeal.

(2) This sub-rule does not apply to a judgment obtained on consent or in default of defence.

## 64.02 Where Proceedings May be Stayed by Order

(1) Where any order appealed from is an interlocutory order, there shall be no stay of proceedings to enforce the order or of proceedings pursuant to the order pending the disposition of an appeal therefrom, unless ordered by the judge or officer who made the order or by any other judge or officer having concurrent jurisdiction.

(2) Where any judgment appealed from awards an injunction, a mandamus or maintenance under the *Divorce Act (Canada)* or support under *The Family Law Reform Act 1978*, or the custody of or access to a child, there shall be no stay of proceedings to enforce the judgment or of proceedings pursuant to the judgment pending the disposition of an appeal therefrom unless ordered by the judge presiding at the trial or hearing of the proceeding or by a judge of the appropriate appellate court.

Rule 505  
Rules 506(2); 514(3)  
Rule 506(1)

## Rule 505

506. The judge at the trial may stay the entry of judgment or the issue of execution for a period not exceeding thirty days, but this does not prevent the settlement of the judgment.

## Rule 506

506.—(1) If the judgment or order appealed from awards a mandamus, or an injunction, or support under the *Family Law Reform Act, 1978* or maintenance under the *Divorce Act (Canada)*, or custody of or access to children, except as otherwise provided by statute execution thereof shall not be stayed upon an appeal being set down, unless it shall be otherwise ordered by the judge appealed from or by a judge of the appellate court. In all other cases, unless otherwise ordered by a judge of the appellate court, upon an appeal being set down, execution of the judgment appealed from shall be stayed pending the disposition of the appeal. [Amended, O. Reg. 115/72, s. 9; 216/78, s. 16; 251/79, s. 1.]

(2) Where leave to appeal from an interlocutory order is granted, the judge hearing the application may give directions as to staying proceedings.

## Rule 514

514.—(1) Except in the case of an interim order for corollary relief under the *Divorce Act (Canada)*, a person affected by an interlocutory judgment or order made by the Master, local Judge, local master or other officer, may appeal therefrom to a Judge. [Amended, O. Reg. 520/78, s. 26.]

(2) The appeal shall be by motion, on notice served within four days and returnable within ten days after the decision complained of provided that an appeal brought under Rule 239 may be returnable at the next sittings of the court held pursuant to the said rule where such sittings commence more than four days after the decision appealed from, or if four days or less, at the next following sittings.

(3) The appeal is not a stay of proceedings unless ordered by a judge or by the officer whose decision is complained of. [Amended, O. Reg. 115/72, s. 12.]

NOTES

RULE 64.02 CONTINUED

(3) No order made in aid of the enforcement of any interlocutory judgment or of any final judgment awarding an injunction, a mandamus, maintenance or support for a spouse or child, or the custody of or access to a child shall be stayed by an appeal from such order, unless otherwise ordered by the judge or officer who made the order, or a judge of the appropriate appellate court.

**64.03 Effect of Stay of Proceedings**

(1) Where proceedings are stayed by or pursuant to this rule, the stay shall not operate to prevent the settling, signing and entering of the judgment, the issuing of any Writ of Seizure and Sale and the filing thereof in the office of a sheriff, or recording it in a land titles office, but no other proceedings to enforce the judgment and no proceedings pursuant to the judgment shall be taken unless otherwise ordered by the judge or officer presiding at the trial or hearing of the proceeding or by a judge of the appropriate appellate court.

(2) Where proceedings are stayed by or pursuant to this rule and a Writ of Seizure and Sale has been filed in the office of a sheriff, the appellant is entitled to obtain a certificate from the registrar that proceedings have been stayed pending the appeal and, upon the certificate being filed with the sheriff, he shall not commence or continue to execute the Writ until he is satisfied that the appeal has been dismissed.

**64.04 When Writ of Seizure and Sale May be Set Aside**

Nothing in this rule shall prevent the court from setting aside the issuance and filing of a Writ of Seizure and Sale upon the appellant furnishing proper and sufficient security in lieu thereof.

**Rule 505**

505. The judge at the trial may stay the entry of judgment or the issue of execution for a period not exceeding thirty days, but this does not prevent the settlement of the judgment.

**Rule 508**

508. Where the execution of a judgment is stayed pending an appeal, all further proceedings in the action, other than the issue of the judgment and the taxation of costs thereunder, shall be stayed unless otherwise ordered by a judge of the appellate court. [Amended, O. Reg. 115/72, s. 10.]

**Rule 507**

507. Where an execution has been issued and is thereafter stayed upon an appeal, the appellant is entitled to obtain a certificate from the Registrar

that the execution has been stayed pending the appeal, and, upon the certificate being lodged with the sheriff, the execution shall be suspended, but the execution debtor shall pay the sheriff's fees and the sum so paid shall be allowed to him as part of the costs of the appeal.

## PARTICULAR PROCEEDINGS

## RULE 65 MORTGAGE ACTIONS

## 65.01 Foreclosure Actions

(1) *What Claims may be Joined*

A mortgagee may, in an action for foreclosure of the equity of redemption, claim payment of the mortgage debt by any party personally liable therefor and possession of the mortgaged property.

(2) *All Persons to be Joined*

(a) Unless, by reason of their number or otherwise, it is expedient to commence the action without making subsequent encumbrancers defendants, all persons who may be interested in the equity of redemption shall be made defendants in an action for foreclosure.

(b) Where an action for foreclosure is commenced without making subsequent encumbrancers defendants, the plaintiff may, upon obtaining judgment with a reference, apply to the master on the reference to add the subsequent encumbrancers as defendants; but the master may, in his discretion, disallow the additional costs occasioned thereby where he considers that such procedure was adopted without sufficient reason.

(3) *Right to Redeem must be Requested*

Where a defendant in an action for foreclosure requests the right to redeem the mortgaged property, he shall within the time limited for his defence, and whether a Statement of Defence is delivered or not, file a Request to Redeem (Form 65A) and, where the defendant filing such Request is a subsequent encumbrancer, the Request shall contain particulars of his claim verified by affidavit.

65

- 65.01 (1)
- (2) (a)
- (b)
- (3)

Rule 464  
Rule 465(1)  
Rule 465(2)  
Rule 466(1) (a)

## MORTGAGE ACTIONS

## Rule 464

454. A mortgagee may in an action claim foreclosure of the equity of redemption or a sale of the mortgage premises and payment of the mortgage debt by any party personally liable therefor and possession of the mortgaged premises. The writ shall be endorsed in accordance with the form applicable thereto.

## Rule 465

465.—(1) Subject to sub-rule (2), in an action for foreclosure all persons interested in the equity of redemption shall be made defendants by writ.

(2) Where by reason of their number or otherwise it is expedient to institute the action without making subsequent encumbrancers defendants by writ the plaintiff may, upon obtaining judgment with a reference, apply to add the subsequent encumbrancers as defendants in the Master's Office but where the Master considers that such alternative procedure was taken without sufficient reason he may, in his discretion, disallow the additional costs occasioned thereby.

## Rule 466

466.—(1)(a) Where a defendant by writ in an action for foreclosure or sale desires an opportunity to redeem the mortgaged property, he shall, within the time limited for appearance and, whether an appearance is entered or not, file a notice to that effect and giving his address and naming a place within Ontario to be called his address for service and, where the defendant filing such notice is a subsequent encumbrancer, the notice shall contain particulars of his claim verified by affidavit. (Amended, O. Regs. 36/73, s. 31; 1/79, s. 1.)

**MORTGAGE ACTIONS****RULE 65**

(4) (a)	Rule 466(2)
(b)	Rule 466(3)
(5)	Rule 472
(6)	Rule 473(1), (3), (4), (!)

**NOTES****(4) Effect of Filing Request to Redeem**

Any defendant who has filed a Request to Redeem shall be entitled to,

- (a) seven days notice of the taking of the account of the amount due to the plaintiff;
- (b) three calendar months from the date of the taking of the account of the amount due to the plaintiff within which to redeem the mortgaged property unless he is a subsequent encumbrancer, in which case he shall only become so entitled if his claim is not disputed or, if disputed, is proved on a reference to the master.

**(5) Default Judgment**

In an action for foreclosure, where the defendant has been noted in default and has failed to file a Request to Redeem, the plaintiff may require the registrar to sign Judgment for Immediate Foreclosure (Form 65B) unless a reference is desired as to subsequent encumbrancers. Where a reference is desired as to encumbrancers, the plaintiff is entitled to Judgment for Foreclosure with a Reference (Form 65C); and, if no encumbrancer proves a claim, the master shall so certify and, upon confirmation of his report, the plaintiff shall be entitled to a Final Order of Foreclosure (Form 65D). If, upon the reference, a subsequent encumbrancer proves a claim, he shall be granted the usual period of redemption if so requested.

**(6) Taking the Account**

Where no reference as to subsequent encumbrancers is desired, the registrar may take the account of the amount due to the plaintiff and, where more than one party is entitled to redeem, determine the priority in which each is so entitled and sign a Judgment for Foreclosure (Form 65E). Where, on the taking of the account or in determining priorities, any dispute arises between the parties, or the registrar is in doubt, he may sign a Judgment for Foreclosure with a Reference. As an alternative to obtaining from the registrar judgment for immediate payment, the plaintiff may, where a reference is desired, obtain judgment for the amount to be found due on the reference.

**RULE 66**

(2) Any defendant who has complied with sub-rule (1) shall be entitled to four clear days' notice of the taking of the account of the amount due to the plaintiff.

(3) Any defendant who has complied with sub-rule (1) shall be entitled to six calendar months from the date of the taking of the account of the amount due to the plaintiff within which to redeem the mortgaged property unless he is a subsequent encumbrancer, in which case, in a foreclosure action turned into a sale action pursuant to rule 467, he shall not be entitled to redeem, and in a foreclosure action he shall only become so entitled if his claim is not disputed or, if disputed, is proved on a reference to the Master.

**Rule 472**

472.—(1) In an action for foreclosure or sale where the writ has been specially endorsed and the defendant or defendants fail to appear and fail to comply with rule 466(1) the plaintiff may obtain judgment for immediate foreclosure or immediate sale, as the case may be, unless a reference is desired as to subsequent encumbrancers (Form 104).

(2) If a reference is desired as to encumbrancers, the plaintiff is entitled to judgment with a reference, and, if no encumbrancer proves a claim, the Master shall so certify, and, upon confirmation of the Master's report, a final order of foreclosure or of sale shall be made.

(3) If upon the reference in an action for foreclosure or redemption a subsequent encumbrancer proves a claim, the usual period of redemption shall be granted.

**Rule 473**

473.—(1) Where no reference as to subsequent encumbrancers is desired, the registrar may take the account of the amount due to the plaintiff and, where more than one party is entitled to redeem, determine the priority in which each is so entitled, and sign judgment accordingly (Form 103).

(3) Where, on the taking of the account, or in determining priorities any dispute arises between the parties or the registrar is in doubt, he may sign judgment directing a reference to the Master (Form 102).

(4) Where subsequent encumbrancers are not made defendants by writ and a reference is desired as to encumbrancers, the registrar shall sign judgment directing a reference to the Master (Form 102).

(5) As an alternative to obtaining judgment for immediate payment before the registrar, the plaintiff may, where a reference is desired, obtain judgment for the amount to be found due by the Master.

**MORTGAGE ACTIONS****RULE 65**(7) (a)  
(b)  
(c)Rule 467(1)  
Rule 467(2)  
Rule 467(3)*(7) May be Converted to a Sale*

- (a) Where a defendant in a foreclosure action having an interest in the equity of redemption, other than as a subsequent encumbrancer, desires a sale, but does not desire to defend the action, he may, within the time limited for defence, serve and file, with proof of service, a Request for Sale (Form 65F), and thereupon the plaintiff is entitled to obtain Judgment for Sale (Forms 65B, 65C or 65E as may be).
- (b) Where a defendant in a foreclosure action is a subsequent encumbrancer and desires a sale, but does not desire to defend the action or redeem the mortgaged property, he shall, within the time limited for defence, pay into court the sum of \$250 as security for the costs of the plaintiff and of any other party having carriage of the sale and serve and file, with proof of service, a Request for Sale, together with particulars of his claim verified by affidavit, and the plaintiff is entitled to obtain Conditional Judgment for Sale (Form 65G).
- (c) Where a subsequent encumbrancer added on a reference to the master desires a sale, he shall within 10 days from the date of the service upon him of notice of the reference pay into court the sum of \$250 as security for the costs of the plaintiff and of any other party having carriage of the sale and serve and file a Request for Sale and thereupon the master, on the return of the reference, shall make an order amending the judgment from a judgment for foreclosure to a judgment for sale; provided, however that no such order shall be made until after the subsequent encumbrancer requesting the sale has proved his claim to the satisfaction of the master.

**Rule 467**

467.—(1) Where a defendant in a foreclosure action having an interest in the equity of redemption other than as a subsequent encumbrancer, desires a sale, but does not desire to defend the action, he shall, within the time limited for appearance, serve and file, with proof of service, a notice to that effect and pay into court the sum of \$150 to meet the expenses of the sale, and thereupon judgment for sale shall issue.

(2) Where a defendant in a foreclosure action is a subsequent encumbrancer and desires a sale, but does not desire to defend the action, or redeem the mortgaged property he shall, within the time limited for appearance serve and file, with proof of service, a notice to that effect and pay into court the sum of \$150 to meet the expenses of the sale, and thereupon a judgment for sale conditional upon such defendant proving his claim on a reference to the Master shall issue (Form 64A).

(3) Where a subsequent encumbrancer added in the Master's Office desires a sale, he shall, within the time limited by rule 477, serve and file a notice to that effect, with proof of service, and pay into court the sum of \$150 to meet the expenses of the sale, and thereupon the Master, on the return of the reference, shall make an order amending the judgment from a judgment for foreclosure to a judgment for sale, provided, however, that no such order shall be made until after the subsequent encumbrancer desiring a sale has proved his claim to the satisfaction of the Master.

NOTES**MORTGAGE ACTIONS****RULE 65**

- (d) Where any subsequent encumbrancer has paid into court the sum of \$250 as security for the costs of the plaintiff and of any other party having carriage of the sale and has served and filed a Request for Sale, the master on the return of the reference may require him to pay an additional sum of money into court to meet the expenses of the sale.

**(8) Application to Convert**

- (a) The master may on the motion of any party, either before or after judgment, direct a sale instead of a foreclosure and may direct an immediate sale without previously determining the priorities of encumbrancers or giving the usual or any time to redeem.
- (b) Where a foreclosure action has been converted into a sale action, the master may, on the motion of any party, either before or after judgment, direct a foreclosure instead of a sale where it is made to appear that the value of the property is unlikely to be sufficient to satisfy the claim of the plaintiff.

**Rule 470**

470. The court may, on special application either before or after judgment, direct a sale instead of a foreclosure and may direct an immediate sale without previously determining the priorities of encumbrancers or giving the usual or any time to redeem.

**65.02 Sales Actions****(1) What Claims may be Joined**

A mortgagee may, in an action for sale of the mortgaged property, claim payment of the mortgage debt by any party personally liable therefor and possession of the mortgaged property.

**(2) Persons to be Joined**

In an action for sale, subsequent encumbrancers shall not be made defendants on the commencement of the action, but shall be added as parties on the reference to the master.

**(3) Right to Redeem must be Requested**

Where the defendant in an action for sale requests the right to redeem the mortgaged property, he shall, within the time limited for his defence and, whether a Statement of Defence is delivered or not, file Request to Redeem.

**(4) Effect of Filing Request to Redeem**

Any defendant who has filed a Request to Redeem shall be entitled to,

(a) seven days notice of the taking of the account of the amount due to the plaintiff.

(b) three calendar months from the date of the taking of the account of the amount due to the plaintiff within which to redeem the mortgaged property unless he is only a subsequent encumbrancer, in which case he shall not be entitled to redeem.

**(5) Default Judgment**

In an action for sale, where the defendant has been noted in default and has failed to file a Request to Redeem, the plaintiff may obtain Judgment for Immediate Sale with a Reference (Form 65H).

**65.02 (1)**

(2)

(3)

(4) (a)

(b)

(5)

Rule 464

Rule 465(3)

Rule 466(1) (a)

Rule 466(2)

Rule 466(3)

Rule 472

**Rule 464**

464. A mortgagee may in an action claim foreclosure of the equity of redemption or a sale of the mortgage premises and payment of the mortgage debt by any party personally liable therefor and possession of the mortgaged premises. The writ shall be endorsed in accordance with the form applicable thereto.

(3) In an action for sale, subsequent encumbrancers shall not be made defendants by writ, but shall be added as parties in the Master's Office.

**Rule 466**

466.—(1)(a) Where a defendant by writ in an action for foreclosure or sale desires an opportunity to redeem the mortgaged property, he shall, within the time limited for appearance and, whether an appearance is entered or not, file a notice to that effect and giving his address and naming a place within Ontario to be called his address for service and, where the defendant filing such notice is a subsequent encumbrancer, the notice shall contain particulars of his claim verified by affidavit. [Amended, O. Regs. 36/73, s. 31; 1/79, s. 1.]

(2) Any defendant who has complied with sub-rule (1) shall be entitled to four clear days' notice of the taking of the account of the amount due to the plaintiff.

(3) Any defendant who has complied with sub-rule (1) shall be entitled to six calendar months from the date of the taking of the account of the amount due to the plaintiff within which to redeem the mortgaged property unless he is a subsequent encumbrancer, in which case, in a foreclosure action turned into a sale action pursuant to rule 467, he shall not be entitled to redeem, and in a foreclosure action he shall only become so entitled if his claim is not disputed or, if disputed, is proved on a reference to the Master.

**Rule 472**

472.—(1) In an action for foreclosure or sale where the writ has been specially endorsed and the defendant or defendants fail to appear and fail to comply with rule 466(1) the plaintiff may obtain judgment for immediate foreclosure or immediate sale, as the case may be, unless a reference is desired as to subsequent encumbrancers (Form 104).

(2) If a reference is desired as to encumbrancers, the plaintiff is entitled to judgment with a reference, and, if no encumbrancer proves a claim the Master shall not certify, and, upon confirmation of the Master's report, a final order of foreclosure or of sale shall be made.

(3) If upon the reference in an action for foreclosure or redemption a subsequent encumbrancer proves a claim, the usual period of redemption shall be granted.

NOTES**RHIF 65.02 CONTINUED****(6) Where Judgment for Sale Obtained in Foreclosure Action**

- (a) Where a judgment for sale has been obtained in a foreclosure action, a subsequent encumbrancer, whether or not he has filed a Request to Redeem the mortgaged property, shall be entitled to notice of the first appointment on the reference in the sale action.
- (b) If the plaintiff prefers that the sale be conducted by the defendant requesting the sale, he may so elect, and he shall serve upon such defendant and file, with proof of service, notice of such election, whereupon such defendant shall conduct the sale.
- (c) The master shall deal with the deposit in making his report.

(6) (a)

Rule 466 (4)

(b)

Rule 469 (1)

(c)

Rule 469 (2)

(4) Where a judgment for sale has been obtained in a foreclosure action a subsequent encumbrancer, whether or not he has complied with sub-rule (1), shall be entitled to notice of the first appointment on the reference in the sale action.

**Rule 469**

469.—(1) If the plaintiff prefers that the sale be conducted by an adult defendant desiring the sale, he may so elect, and he shall serve upon such defendant and file, with proof of service, notice of such election, whereupon such defendant shall conduct the sale and shall be entitled to a return of his deposit.

(2) In other cases the Master shall deal with the deposit in making his report.

### **65.03 Redemption Actions**

#### **(1) What Claims may be Joined**

Any person interested in the equity of redemption may, in an action for redemption, claim possession of the mortgaged property.

#### **(2) Persons to be Joined**

(a) Where, in an action for redemption, more than one person is interested in the equity of redemption, they all must be made parties, either as plaintiffs or defendants.

(b) In an action for redemption, subsequent encumbrancers shall not be made defendants unless and until the plaintiff is declared foreclosed. If, upon the reference in an action for redemption, a subsequent encumbrancer is made a defendant and proves a claim, the usual period of redemption shall be granted.

#### **(3) Judgment**

(a) In a redemption action, where the defendant has been noted in default, the plaintiff may require the registrar to sign Judgment for Redemption (Form 65 I).

(b) Every judgment for redemption shall direct a reference to the master whether or not there are any subsequent encumbrancers.

65.03 (2) (b)  
(3) (a)

Rule 472  
Rule 474

472.—(1) In an action for foreclosure or sale where the writ has been specially endorsed and the defendant or defendants fail to appear and fail to comply with rule 46(1) the plaintiff may obtain judgment for immediate foreclosure or immediate sale, as the case may be, unless a reference is desired as to subsequent encumbrances (Form 104).

(2) If a reference is desired as to encumbrances, the plaintiff is entitled to judgment with a reference, and, if no encumbrancer proves a claim the Master shall so certify, and, upon confirmation of the Master's report, a final order of foreclosure or of sale shall be made.

(3) If upon the reference in an action for foreclosure or redemption a subsequent encumbrancer proves a claim, the usual period of redemption shall be granted.

#### **Rule 474**

474. In a redemption action, where the writ has been specially endorsed and the defendant fails to appear, the plaintiff may sign judgment (Form 105).

NOTES**65.04 Proceedings on the Reference**(1) *Applicable to All Mortgage Actions*

- (a) Upon a reference pursuant to a judgment for foreclosure or sale or redemption of a mortgaged property, the master shall determine who has any lien, charge or encumbrance thereon subsequent to the mortgage in question.
- (b) The plaintiff shall file with the master sufficient evidence to enable him to determine who appears to have any lien, charge or encumbrance upon the mortgaged property subsequent to the mortgage in question.
- (c) Subject to Rule 65.03 (2)(b), the master shall direct all such persons as appear to have any lien, charge or encumbrance upon the mortgaged property subsequent to the mortgage in question who were not made defendants on the commencement of the action to be made parties to the action and to be served with Notice of Reference to Added Party having Encumbrance (Form 65J).
- (d) Any person served with such notice may apply within 10 days from the date of the service to discharge, add to, vary or set aside the judgment or order making him a party.
- (e) Where it appears to the master that a person who was made a defendant on the commencement of the action, who has not been made a party to the action as a subsequent encumbrancer, may have some lien, charge or encumbrance upon the mortgaged property subsequent to the mortgage in question, the master shall direct such defendant to be served with Notice of Reference to Original Party having Encumbrance (Form 65K).

65.04 (1) (a)  
 (b)  
 (c)  
 (d)  
 (e)

Rule 475  
 Rule 476  
 Rule 477(1)  
 Rule 477(2)  
 Rule 477(3)

**Rule 475**

475. Upon a reference pursuant to a judgment for foreclosure or sale or redemption of mortgaged property, the Master shall determine who has any lien, charge or encumbrance thereon subsequent to the mortgage in question.

**Rule 476**

476. The plaintiff shall file with the Master sufficient evidence to enable him to determine who appears to have any lien, charge or encumbrance upon the mortgaged property subsequent to the mortgage in question.

**Rule 477**

477.—(1) The Master shall direct all such persons as appear to have any lien, charge or encumbrance upon the mortgaged property subsequent to the mortgage in question who are not defendants by writ to be made parties to the action and to be served with notice of the reference (Form 46).

(2) Any person served with such notice may apply, within ten days from the date of the service, to discharge, add to, vary or set aside the judgment or the order making him a party.

(3) Where it appears to the Master that a defendant by writ, who has not been made a party to the action as a subsequent encumbrancer, may have some lien, charge or encumbrance upon the mortgaged property, subsequent to the mortgage in question, the Master shall direct such defendant to be served with notice of the reference (Form 47).

RULE 65.04 CONTINUED"

- (f) Subject to clauses (g) and (h) all persons who were made defendants on the commencement of the action shall be served with Notice of Reference to All Original Defendants (Form 65L), stating the names and nature of the claims of all those appearing to have a lien, charge or encumbrance upon the mortgaged property.
- (g) Any person made a defendant on the commencement of the action who is not a subsequent encumbrancer and has failed to file a Request to Redeem or a Request for Sale may be served with Notice of Reference to All Original Defendants by prepaid post addressed to him at his last known address.
- (h) Any subsequent encumbrancer who was made a defendant on the commencement of the action and has failed to file a Request to Redeem or a Request for Sale is not entitled to any notice of the reference.
- (i) On the reference, the master shall take an account of what is due to the plaintiff and to any subsequent encumbrancer who has proved a claim and shall tax or fix their costs and shall appoint a time and place for payment, unless the reference directed is for immediate sale, in which case the master shall proceed to give directions for the sale and defer the taking of an account until after the sale or an abortive sale. Where the sale is on the request of a subsequent encumbrancer, the master shall first satisfy himself that that subsequent encumbrancer has a valid claim.
- (j) One day shall be fixed for redemption for all of the parties entitled to redeem and, where more than one party is entitled to redeem, the master shall determine the priority in which each is so entitled.

(f)	Rule 478 (1)
(g)	Rule 478 (2)
(h)	Rule 478 (3)
(i)	Rule 480 (1)
(j)	Rule 480 (2)

Rule 478

478.—(1) Subject to sub-rules (2) and (3), all defendants by writ shall be served with notice of the reference stating the names and nature of the claims of all those appearing to have a lien, charge or encumbrance upon the mortgaged property (Form 48).

(2) Any defendant by writ who is not a subsequent encumbrancer and has failed to comply with sub-rule (1) of rule 466 may be served with notice of the reference by prepaid post addressed to him at his last known address.

(3) Any subsequent encumbrancer who has been made a defendant by writ and has failed to comply with sub-rule (1) of rule 466 is not entitled to any notice of the reference.

Rule 480

480.—(1) On the reference, the Master shall take an account of what is due to the plaintiff and to any subsequent encumbrancer who has proved a claim and shall tax their costs and shall appoint a time and place for payment.

(2) One day shall be fixed for redemption by all of the parties entitled to redeem, and where more than one party is entitled to redeem the Master shall determine the priority in which each is so entitled.

## RULE 65.04 CONTINUED

- (k) On any proceeding for foreclosure or sale by, or for redemption against, an assignee of a mortgagee, the statement of the mortgage account, verified by affidavit of such assignee, shall be sufficient *prima facie* evidence of the state of such account and an affidavit shall not be required from the mortgagee or any intermediate assignee denying any payment to such mortgagee or intermediate assignee, unless the mortgagor or his assignee, or any party entitled to redeem, denies by affidavit the correctness of such statement of account.
- (l) The master in his report shall state the names of all persons who have been parties in his office, and all subsequent encumbrancers who have been served with notice of the reference and the names of such as have made default, and shall set forth the amount of the claims and the priorities of such as have attended and proved their claims who shall be certified as the only encumbrancers upon the property. The report shall bear the date upon which it is settled. Where any period fixed for redemption expires in less than 15 days after confirmation of the report, a new account shall be taken.
- (m) Subject to *The Mortgages Act*, upon payment of the amount found due, the mortgagee shall, unless the judgment otherwise directs, assign and convey the mortgaged property to the party making the payment, or to whom he may appoint, free and clear of all encumbrances incurred by the mortgagee and shall deliver up all deeds and writings in his custody or power relating thereto.

(k)

(l)

(m)

Rule 481  
Rule 482  
Rule 488

287

## Rule 481

481. On any proceeding for foreclosure or sale by, or for redemption against, an assignee of a mortgagee, the statement of the mortgage account, under the oath of such assignee, is sufficient *prima facie* evidence of the state of such account, and an affidavit or oath shall not be required from the mortgagee or any intermediate assignee denying any payment to such mortgagee or intermediate assignee, unless the mortgagor or his assignee, or the party proceeding to redeem, denies by oath or affidavit the correctness of such statement of account.

## Rule 482

482. The Master's report shall state the names of all persons who have been made parties in his office, and all subsequent encumbrancers who have been served with notice of the reference and the names of such as have made default, and shall set forth the amount of the claims and the priorities of such as have attended and proved their claims who shall be certified as the only encumbrancers upon the property. The report shall bear date the day upon which it is settled and shall be signed and filed within fourteen days thereafter, otherwise a new account shall be taken.

## Rule 488

488. Subject to *The Mortgages Act*, upon payment of the amount found due, the mortgagee shall, unless the judgment otherwise directs, assign and convey the mortgaged property to the party making the payment, or to whom he may appoint, free and clear of all encumbrances done by the mortgagee, and shall deliver up all deeds and writings in his custody or power relating thereto.

## RULE 65.04 CONTINUED

(n)	Rule 496(1)
(o)	Rule 496(2)
(p)	Rule 496(3)
(q)	Rule 771(2)

- (n) Where it is made to appear that by reason of their number or otherwise it is expedient to permit a mortgage action to proceed without the presence of all persons interested in the equity of redemption, other than subsequent encumbrancers, the court may give directions accordingly and may order such other persons to be made parties in the master's office after judgment.
- (o) Where on a reference it appears there are persons interested in the equity of redemption, other than subsequent encumbrancers, who are not already parties to the action, such persons may be made parties in the master's office upon such terms as may seem just and any such order shall direct a copy of the order, together with a copy of the judgment or order of reference and a Notice to Added Party (Form 65M) to be served on every such person.
- (p) A person so served may apply within 10 days from the date of such service to discharge, add to, vary or set aside the judgment or the order making him a party.
- (q) In mortgage actions in a county court, the clerk shall, subject to the directions of a judge, discharge all the duties and have all the powers of a registrar of the Supreme Court and may act as referee in any mortgage reference directed by a default judgment and in the taking of any accounts that may be referred to him by a judge. If it appears to the clerk that a mortgage reference directed by a default judgment is one which, in his opinion, ought to be dealt with by a judge, the clerk may apply to a judge for directions.

## Rule 496

496.—(t) Where it is made to appear that by reason of their number or otherwise it is expedient to permit a mortgage action to proceed without the presence of all persons interested in the equity of redemption, other than subsequent encumbrancers the court may give directions accordingly and may order such other persons to be made parties in the Master's Office after judgment.

(2) Where on a reference it appears that there are persons interested in the equity of redemption other than subsequent encumbrancers who are not already parties to the action, such persons may be made parties in the Master's Office upon such terms as seem just and any such order shall direct a copy of the order endorsed with a notice according to Form 45, and a copy of the judgment or order of reference endorsed with a notice according to Form 43, to be served on every such person.

(3) A person so served may apply within ten days from the date of such service to discharge, add to, vary or set aside the judgment or the order making him a party.

## Rule 771

(2) If it appears to the clerk that a mortgage reference directed by a praecipe or default judgment is one which in his opinion ought to be dealt with by the judge, the clerk may apply to the judge for directions.

NOTES

RULE 65.04 (CONTINUED)

(2) Applicable to Foreclosure Actions

- (a) Where a party appearing to have any lien, charge or encumbrance subsequent to the mortgage in question, has been served with a notice under sub-rule (1)(c), (1)(e) or (1)(f) and fails to attend and prove his claim at the time and place appointed, the master shall so report and, upon confirmation of his report, the claim of any such party shall be deemed to have been foreclosed.
- (b) Where no defendant, other than a subsequent encumbrancer, has delivered a Statement of Defence or filed a Request to Redeem, and where no subsequent encumbrancer has proved a claim on the reference, the master shall so report; and, upon the confirmation of his report, a Final Order for Foreclosure may be obtained upon an application without notice.
- (c) Subsequent accounts shall from time to time be taken, subsequent costs taxed, and necessary proceedings had, for redemption by or foreclosure of the other parties entitled to redeem the mortgaged property, as if specific directions for all those purposes had been contained in the judgment.
- (d) Where more than one defendant entitled to redeem makes payment, any such defendant may apply to the master for an order for further directions, and thereupon sub-rule (2)(c) shall apply.
- (e) Where the judgment is for redemption or foreclosure, such proceedings are to be taken, and with the same effect as in an action for foreclosure, and in such case the last encumbrancer shall be treated as the owner of the equity of redemption.
- (f) In default of payment according to the report in a foreclosure action, a Final Order for Foreclosure may, on a motion without notice, be granted against the party in default.

(2) (a)  
(b)  
(c)  
(d)  
(e)  
(f)

Rule 479 (1)  
Rule 479 (2)  
Rule 483 (1)  
Rule 483 (2)  
Rule 487  
Rule 492

289

Rule 479

479.—(1) Where a party appearing to have any lien, charge or encumbrance, subsequent to the mortgage in question, has been served with a notice under rules 477 or 478 and fails to attend and prove his claim at the time and place appointed, the Master shall so report and, upon confirmation of his report, the claim of any such party shall be deemed to have been foreclosed.

(2) Where no defendant other than a subsequent encumbrancer has complied with sub-rule (1) of rule 466 and where no subsequent encumbrancer has proved a claim on the reference, the Master shall so report, and, upon the confirmation of his report, a final order of foreclosure or of sale may be obtained upon an ex parte application.

Rule 483

483.—(1) Subsequent accounts shall, from time to time, be taken, subsequent costs taxed, and necessary proceedings had, for redemption by, or foreclosure of, the other parties entitled to redeem the mortgaged property, as if specific directions for all these purposes had been contained in the judgment.

(2) Where more than one defendant entitled to redeem makes payment, any such defendant may apply to the Master for an order for further directions, and thereupon sub-rule (1) shall apply.

Rule 487

487. Where the judgment is for redemption or foreclosure or redemption or sale, such proceedings are in such case to be thereupon had, and with the same effect as in an action for foreclosure or sale, and in such case the last encumbrancer shall be treated as the owner of the equity of redemption.

Rule 492

492. In default of payment according to the report in a foreclosure action, a final order of foreclosure may, on an ex parte application, be granted against the party making default.

## RULE 65.04 CONTINUED

(3) (a)  
 (b)  
 (c)  
 (d)

Rule 479(2)  
 Rule 480(3)  
 Rule 484(i)  
 Rule 484(2)

(3) *Applicable to Sale Actions*

- (a) Where no defendant, other than a subsequent encumbrancer, has delivered a Statement of Defence or filed a Request to Redeem and where no subsequent encumbrancer has proved a claim on the reference, the master shall so report; and, upon the confirmation of his report, a Final Order of Sale (Form 65O) may be obtained upon a motion without notice.
- (b) In a sale action, any defendant having an interest in the equity of redemption, other than a subsequent encumbrancer, who has filed a Request to Redeem shall be entitled to redeem and, in order to redeem, he shall be required to pay the amount found due to the plaintiff and his costs.
- (c) If a judgment directs a sale on default in payment, then an order for sale may be obtained on a motion without notice.
- (d) Upon a judgment or order for sale being obtained, the property shall be sold with the approbation of the master, and the purchaser shall pay his purchase money into court unless otherwise directed by the master.

(2) Where no defendant other than a subsequent encumbrancer has complied with sub-rule (1) of rule 466 and where no subsequent encumbrancer has proved a claim on the reference, the Master shall so report, and, upon the confirmation of his report, a final order of foreclosure or of sale may be obtained upon an ex parte application.

(3) In a sale action, any defendant having an interest in the equity of redemption, other than a subsequent encumbrancer, who has complied with sub-rule (1) of rule 466 shall be entitled to redeem and, in order to redeem, he shall be required to pay the amount found due to the plaintiff and to any subsequent encumbrancer who has proved a claim including their costs.

## Rule 484

484.—(1) If a judgment directs a sale on default in payment, then an order for sale may be obtained on an ex parte application.

(2) Upon a judgment or order for sale being obtained the property shall be sold with the approbation of the Master, and the purchaser shall pay his purchase money into court unless otherwise directed by the Master.

RULE 65.04 CONTINUED

- (e) When so paid, the purchase money shall be applied in payment of what has been found due to the plaintiff and the other encumbrancers, if any, according to their priorities, together with subsequent interest and subsequent costs.
- (f) Where the purchase money is not sufficient to pay what has been found due to the plaintiff, the plaintiff is entitled, on a motion made without notice, to an order for payment of the deficiency by any defendant liable for the mortgage debt.
- (g) Where the judgment is for redemption or sale, such proceedings are to be taken, and with the same effect as in an action for sale, and in such case the last encumbrancer shall be treated as the owner of the equity for redemption.
- (4) *Applicable to Redemption Actions*

- (a) Upon a reference under a judgment for redemption, the master shall take an account of what is due to the defendant, including costs, if any, and shall appoint a time and place for payment.
- (b) In a redemption action, on default of payment being made according to the report, the defendant is entitled, upon a motion without notice, to a final order of foreclosure against the plaintiff or to an order dismissing the action with costs to be paid by the plaintiff.
- (c) In a redemption action where the plaintiff is declared foreclosed, directions may be given, either by the final order foreclosing the plaintiff or by subsequent orders, that all necessary inquiries be made, accounts taken and proceedings had for redemption or foreclosure, or redemption or sale, as against any subsequent encumbrancers, or for the adjustment of the relative rights and liabilities of the original defendants as among themselves.

(e)	Rule 485
(f)	Rule 489
(g)	Rule 487
(4) (a)	Rule 486
(b)	Rule 493
(c)	Rule 494

NOTES

Rule 485

485. When so paid, the purchase money shall be applied in payment of what has been found due to the plaintiff and the other encumbrancers, if any, according to their priorities, together with subsequent interest and subsequent costs.

Rule 489

489. If the purchase money is not sufficient to pay what has been found due to the mortgagee (where the mortgagor or person liable to pay the debt is a defendant), he is entitled on an ex parte application to an order for the payment of the deficiency.

Rule 487

487. Where the judgment is for redemption or foreclosure or redemption or sale, such proceedings are in such case to be therupon had, and with the same effect as in an action for foreclosure or sale, and in such case the last encumbrancer shall be treated as the owner of the equity of redemption.

Rule 486

486. Upon a reference under a judgment for redemption, the Master shall take an account of what is due to the defendant including costs, if any, and shall appoint a time and place for payment.

Rule 493

493. In a redemption action, on default of payment being made according to the report, the defendant is entitled, on an ex parte application, to a final order of foreclosure against the plaintiff or to an order dismissing the action with costs to be paid by the plaintiff.

Rule 494

494. In a redemption action where the plaintiff is declared foreclosed, directions may be given either by the final order foreclosing the plaintiff, or by subsequent orders, that all necessary inquiries be made, accounts taken and proceedings had for redemption or foreclosure, or redemption or sale, as against any subsequent encumbrancers, or for the adjustment of the relative rights and liabilities of the original defendants as among themselves.

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## 65.05 Where There has been a Change of Account

(1) Where the state of account as ascertained by a judgment, order or report is changed before the day appointed for payment, the mortgagee may, at least 15 days before the day appointed, give notice of the change of account to the person called upon to pay, giving particulars of the change of account and of the sum to be paid.

(2) If notice of change of account has been given and the sums therein mentioned appear properly to be allowed or paid, a final order may be granted without further notice or the master, on the motion for a final order, may in his discretion require notice to be given and may fix a new day.

(3) If any party to whom notice of change of account is given is dissatisfied, he may apply to the master to determine the amount to be paid and to fix a new day.

(4) If the state of account has been changed before the day appointed for payment and no such notice has been given and the amount payable for redemption is reduced, a new day shall be appointed for payment upon notice to the persons entitled to redeem but, if the amount payable has been increased, the mortgagee may apply for a final order without the appointment of a new day.

(5) If the state of the account has been changed after the day appointed for payment, it is not necessary to appoint a new day, unless the master on the motion for a final order so directs.

(6) In mortgage actions, the initial period allowed for redemption shall be three months, and when it becomes necessary to fix a new day for redemption after the lapse of the original period, the further time allowed shall be one month, unless otherwise ordered.

(7) Notwithstanding the preceding paragraph, the court may, on the motion of any party, extend or abridge the time redemption from time to time for such length of time and upon such terms as may seem just.

## 65.05(1)

- (2)
- (3)
- (4)
- (5)
- (6)
- (7)

Rule 490(1)  
Rule 490(2)  
Rule 490(3)  
Rule 490(4)  
Rule 490(5)  
Rule 495(1)  
Rule 495(2), (3)

## Rule 490

490.—(1) Where the state of account as ascertained by a judgment, order or report is changed before the day appointed for payment, the mortgagee may, before the day appointed, give notice of the change of account to the person called upon to pay, giving particulars of the change of account and of the sum to be paid.

(2) If notice of change of account has been given and the sums therein mentioned appear proper to be allowed or paid, a final order may be granted without further notice or the officer applied to may in his discretion require notice to be given and may fix a new day.

(3) If any party to whom notice of change of account is given is dissatisfied, he may apply to the Master to determine the amount to be paid and to fix a new day.

(4) If the state of account has been changed before the day appointed for payment and no such notice has been given and the amount payable for redemption is reduced, a new day shall be appointed for payment upon notice to the persons entitled to redeem but, if the amount payable has been increased, the mortgagee may apply for a final order without the appointment of a new day.

(5) If the state of the account has been changed after the day appointed for payment, it is not necessary to appoint a new day unless the officer to whom the application is made for a final order so directs.

## Rule 495

495.—(1) In mortgage actions, the original period allowed for redemption shall be six months, and when it becomes necessary to fix a date for redemption after the lapse of the original period, the further time allowed shall be one month.

(2) Notwithstanding sub-rule (1), the court may, on the application of any party entitled to redeem, extend the time for redemption from time to time for such time and upon such terms as may seem just.

(3) Notwithstanding sub-rule (1), the time for redemption may be abridged on the consent of all parties entitled to redeem or in cases where in the opinion of the court the value of the mortgaged property may depreciate to the detriment of one or more of the parties to the action.

## PARTICULAR PROCEEDINGS

## RULE 66 PROCEEDINGS FOR ADMINISTRATION

## 66.01 Where Available

(1) A proceeding for the administration of the estate of a deceased person or for the execution of a trust may be commenced by a Notice of Application by any person claiming to be a creditor or beneficiary under the will or on the intestacy of the deceased or under any instrument of trust.

(2) Such a proceeding may also be commenced by an executor or administrator of the deceased or by a trustee.

(3) A judgment for the administration of any estate or for the execution of a trust may be refused if the judge is satisfied that the questions between the parties can be properly determined without such judgment.

(4) Where no accounts or insufficient accounts have been rendered, the judge may, instead of granting judgment for administration of the estate or for the execution of a trust, order that the executors, administrators or trustees render to the applicant a proper statement of their accounts and stay the proceeding in the meantime.

## 66.02 Where a Person under Disability is Interested

A judgment for the administration of an estate or for the execution of a trust in which a person under disability is interested shall not be made unless the person under disability is made a party respondent and the provisions of Rule 7 are complied with.

## 66.03 Where a Reference is Directed

(1) Where a Judgment for Administration (Form 66A) of an estate or for the execution of a trust directs a reference, the person to whom the reference is directed shall, subject to this rule, proceed to conduct the reference in accordance with the procedure prescribed by Rule 57.

66

66.01 (1)  
(2)  
(3)  
(4)

66.02  
66.03 (1)

Rule 615  
Rule 617  
Rule 619  
Rule 620  
Rule 616  
Rule 618 (1)

615. Any person claiming to be a creditor, or a specific, pecuniary, or residuary legatee, or the next of kin, or one of the next of kin, or the heir, or devisee interested under the will of a deceased person, may apply by originating notice for the administration of the estate, real or personal, of such deceased person (Form 106).

617. An executor or administrator may, upon summary application, obtain a judgment for administration.

619. It is not obligatory on the court to pronounce or make a judgment or order for the administration of any trust or of the estate of any deceased person, if the questions between the parties can be properly determined without such judgment or order.

620. In any action or proceeding for the administration or execution of trusts by a creditor or beneficiary under a will, intestacy or instrument of trust, where no accounts or insufficient accounts have been rendered, the court may, instead of pronouncing judgment for administration,

616. A judgment for the administration of an estate in which an infant or a mentally incompetent person who has no committee except the Public Trustee is interested shall not be made unless the infant or mentally incompetent person is made a party defendant and notice is given to the Official Guardian, and notice of such application shall, unless otherwise ordered, also be given to such mentally incompetent person,

618.—(1) Where judgment for administration is granted, the Master to whom the matter is referred shall proceed to administer the estate in the most expeditious and least expensive manner, and in doing so shall, without special direction, take,

- (a) an account of the personal estate of the deceased that has come to the hands of his executor or administrator;
- (b) an account of his debts;
- (c) an account of his funeral expenses;
- (d) an account of the testator's legacies;
- (e) an inquiry as to what parts, if any, of the real and personal estate are outstanding or disposed of;
- (f) an inquiry as to what real estate the deceased was seized of, or entitled to, at the time of his death;
- (g) an inquiry as to what encumbrances affect the real estate;
- (h) an account of the rents and profits of the real estate received by any party since the death;
- (i) an account of what is due to such of the encumbrancers as consent to sale in respect of their encumbrances;
- (j) an inquiry as to what are the priorities of such last-mentioned encumbrances.

NOTES**RULE 66.03****PROCEEDINGS FOR ADMINISTRATION RULE 66**

(2) On any such reference the person to whom the reference is directed shall have the power to deal with the real and personal property, including the power to give all necessary directions for its realization and shall finally wind up all matters connected with the estate or trust without any further directions, except where the special circumstances of the case require interim reports or interlocutory orders.

(3) In taking accounts in administration proceedings, interest shall be computed on the debts of the deceased from the date of the judgment and, on legacies, from the end of one year after the death of the deceased, unless another time of payment is directed by the will.

(4) All money realized from the estate shall forthwith be paid into court, and no money shall be distributed or paid out for costs or otherwise, except by order of a judge.

(5) On a motion for an order for distribution, the judge may review, amend or refer back the report or make such other order as seem just.

(2) The Master shall, under any such reference, have power to deal with both the real and personal estate, including the power to give all necessary directions for its realization, and shall finally wind up all matters connected with the estate, without any further directions, and without any separate interim or interlocutory reports or orders except where the special circumstances of the case absolutely call therefor.

**Rule 438**

438. In taking accounts in administration proceedings, interest shall be computed on the deceased's debts from the date of the judgment or order, and, on legacies, from the end of one year after the deceased's death, unless another time of payment is directed by the will.

(3) All money realized from the estate shall forthwith be paid into court, and no money shall be distributed or paid out for costs or otherwise without an order of a judge, and, on the application for an order for distribution, the judge may review, amend or refer back the report, or make such other order as seems just.

## NOTES

**RULE 67 PARTITION PROCEEDINGS****67.01 Where Available**

(1) Any person, not under disability, entitled to compel the partition of land or any estate or interest therein may, by Notice of Application, apply for partition or sale.

(2) A proceeding for partition on behalf of a person under disability may only be commenced by his litigation guardian and with leave of a judge.

**67.02 Where a Person under Disability is Interested**

A judgment for partition or sale of land or any estate or interest therein in which a person under disability is interested shall not be made unless the provisions of Rule 7 have been complied with.

**67.03 Where a Reference is Directed**

(1) Where a Judgment for Partition or Sale (Form 67A) of land or an estate or interest therein directs a reference, the person to whom the reference is directed shall, subject to this rule, proceed to conduct the reference in accordance with the procedure prescribed by Rule 57.

(2) On any such reference, the person to whom a reference is directed shall have the power to add any necessary parties, to ascertain the rights of the various parties interested and to tax the costs of any such parties.

(3) All money realized from a sale of the land or any estate or interest therein shall forthwith be paid into court, and no money shall be distributed or paid out for costs or otherwise, except by order of a judge.

(4) On a motion for an order for distribution, the judge may review, amend or refer back the report or make such other order as may seem just.

67

- 67.01(1)
- (2)
- 67.02
- 67.03(1)
- (2)
- (3)
- (4)

- Rule 622(1)
- Rule 623
- Rule 622(2)
- Rule 622(3)
- Rule 622(3)
- Rule 622(4)
- Rule 622(4)

**PARTITION****Rule 622**

622—(1) An adult person entitled to compel partition of land or any estate or interest therein may, by originating notice served on one or more of the persons entitled to a share therein, apply for partition or sale (Form 107).

(2) Where an infant or a mentally incompetent person who has no committee except the Public Trustee is interested, he shall be made a party defendant before judgment, and notice shall be given to the Official Guardian and notice of such application shall, unless otherwise ordered, also be given to the mentally incompetent person.

(3) The Master shall proceed in the least expensive and most expeditious manner for partition or sale, the adding of parties, the ascertainment of the rights of the various persons interested, the taxation and payment of costs, and otherwise.

(4) All money realized shall forthwith be paid into court, and no money shall be distributed or paid out for costs or otherwise, without an order of a judge, and, on the application for an order for distribution, the judge may review, amend or refer back to the Master his report or make such other order as seems just.

**Rule 623**

623. An application for partition on behalf of an infant by his guardian or next friend may be made with the sanction of a Judge to be first obtained upon notice to the Official Guardian.

NOTES

68

68.01  
68.02 (1)  
(2)  
(3)  
(4)

Rule 625  
Rule 626 (1)  
Rule 626 (1)  
Rule 626 (2)  
Rule 626 (3)

**RULE 68 PROCEEDINGS CONCERNING THE ESTATES OF MINORS****68.01 How Commenced**

A proceeding for approval of the sale, mortgage, lease or other disposition of the whole or any part of the estate of a minor may be commenced by a Notice of Application, and shall be made to a judge upon notice to the Official Guardian.

**68.02 Affidavit in Support**

(1) The affidavit in support of any such proceeding shall state the nature and amount of the real and personal property to which the minor is entitled.

(2) If the proceeding is for approval of the sale, mortgage, lease or other disposition of real property, the affidavit shall show the nature and value of the real property to be disposed of, the annual profits therefrom and the present occupation thereof, as well as the facts relied upon to establish the necessity for the proposed disposition.

(3) If an allowance for maintenance is desired, the affidavit shall state the amount required and the facts relied upon to establish the need for such an allowance and, where applicable, shall show the necessity for resorting to the real property to provide such an allowance.

(4) If the appointment of a guardian is desired, the affidavit shall state the reason therefor and the facts relied upon to justify the appointment of the person proposed.

**Rule 625**

625. All applications for the sale, mortgage, lease or other disposition of an infant's estate shall be made to a judge upon notice to the Official Guardian.

**Rule 626**

626.—(1) The affidavits filed shall state the nature and amount of the personal property to which the infant is entitled, the necessity of resorting to the real estate, its nature, value, and the annual profits thereof and the occupation of the lands to be disposed of, and shall state specifically the relief desired and circumstances sufficient to justify the order sought.

(2) If an allowance for maintenance is desired, a case shall also be stated and made to justify such an order and to regulate the amount.

(3) If the appointment of a guardian is desired, a case shall be stated and made for the appointment of the person proposed.

NOTES

**68.03 Where Consent Required**

(1) Approval for the sale, mortgage, lease or other disposition of the whole or any part of the estate of a minor shall not be given unless the consent of any minor over the age of 16 years has been filed; but any such consent may be dispensed with if the Official Guardian does not object.

(2) When so directed by the judge, the minor shall be produced before him or before a master and shall be examined apart as to his consent.

(3) Where the minor is out of Ontario, the judge may direct an inquiry to be made as to the consent of the minor in such manner as may seem just.

68.03(1)

(2)

(3)

Rule 627(1) 29

Rule 627(2)

Rule 627(3)

**Rule 627**

627.—(1) The consent of all infants over sixteen years of age shall be filed, verified by an affidavit of a solicitor stating that the consent was read over by him to the infant and fully explained to and apparently understood by the infant.

(2) When so directed by the judge, the infant shall be produced before him or before a master and shall be examined apart as to his consent.

(3) Where the infant is out of Ontario, the judge may direct inquiry as to the infant's consent in such manner as seems proper.

69	69.01(1)	Rule 629(1)
	(2)	Rule 629(1)
	(3)	Rule 629(2)

## RULE 69 PROCEEDINGS FOR JUDICIAL REVIEW

### 69.01 How Commenced

(1) A proceeding for judicial review under *The Judicial Review Procedure Act, 1971*, may be commenced by a Notice of Application and, subject to paragraph (2), shall be made to the Divisional Court.

(2) A proceeding for judicial review may be made to the High Court with leave of a judge thereof, which may be granted at the hearing of the application, where it is made to appear to the judge that the case is one of urgency and that the delay required for having the application heard by the Divisional Court is likely to involve a failure of justice.

(3) Where a judge of the High Court refuses leave for a proceeding under paragraph (2), he may order that the proceeding be transferred to the Divisional Court.

### 69.02 Interim Order

On any proceeding for judicial review, a judge of the High Court may make such interim order as he considers proper, pending the final determination of the proceeding.

### Rule 629

629.—(1) Applications for judicial review under *The Judicial Review Procedure Act, 1971*, may be granted upon a summary application by originating notice to the Divisional Court or, with leave, to a judge. [Amended, O. Reg. 520/78, s. 38.]

(2) A judge may adjourn for consideration by the Divisional Court any application for judicial review under *The Judicial Review Procedure Act, 1971*. [Amended, O. Regs. 116/72, s. 17; 520/78, s. 39.]

## NOTES

## 70.01 How Commenced

(1) A proceeding under either Section 2 or Section 30 of *The Quieting Titles Act* shall be commenced by petition in the form prescribed by the Act, and shall be made to a judge of the High Court.

(2) No petition shall include two or more properties dependent on separate and distinct titles, but a petition may include any number of lands or parcels belonging to the same person and dependent on one and the same chain of title.

(3) Every petition under the Act shall be filed in the office of the local registrar at Toronto and may, at the option of the petitioner, be referred to the referee in Toronto or to any local referee.

(4) Where a petitioner desires to have the petition referred to a particular local referee, he shall endorse the petition accordingly.

(5) Where a petition is filed with no endorsement, it shall stand referred to the referee in Toronto, but a petition endorsed to a local referee shall stand referred to him.

(6) The Senior Master is the sole inspector of titles in respect of petitions filed under the Act and the sole referee in Toronto, but he may assign to any master such duties as inspector or referee as he from time to time deems advisable.

(7) Upon the filing of the petition, the local registrar at Toronto shall attend upon one of the judges of the High Court, designated by the Chief Justice of the High Court to hear petitions under the Act, for directions before it is referred to a referee for investigation.

\*(8) Subject to the directions of the judge, the local registrar at Toronto shall transmit the petition to the referee but, where the petition is referred to a local referee, a copy of the petition shall be filed with the inspector of titles before it is transmitted to the local referee.

70

- 70.01(1)
- (2)
- (3)
- (4)
- (5)
- (6)
- (7)
- (8)

- Rule 720
- Rule 699
- Rule 701
- Rule 703
- Rule 704
- Rule 702
- Rule 700
- Rules 700; 706; 707

## Rule 720

720. Petitions under section 30 of the Act shall be filed and proceeded with in the same manner, as nearly as may be, as petitions for an indefeasible title.

## Rule 699

699. A petition for an investigation of titles under *The Quieting Titles Act*, referred to in rules 700 to 721 as "the Act", shall not include two or more properties dependent on separate and distinct titles, but may include any number of lots or parcels belonging to the same person and dependent on one and the same chain of title.

## Rule 701

701. All petitions under the Act shall be filed in the Registrar's office at Toronto, and may, at the option of the petitioner, be referred to the referee in Toronto or to any local master.

## Rule 703

703. Petitions to be referred to a local referee shall be endorsed thus:  
"To be referred to the Referee at ..... and to Mr. .....  
..... Inspector of Titles".

## Rule 704

704. Petitions filed unendorsed shall, without order, stand referred to the referee in Toronto, but a petition endorsed with the name of a local referee shall stand referred to him.

## Rule 702

702. The Master is the sole inspector of titles in respect of petitions filed under the Act, and the sole referee in Toronto, but he may assign to any assistant master such duties as inspector or referee as he from time to time deems advisable.

## Rule 700

700. Where an application is made under section 2 of the Act, the proper officer in the Registrar's office at Toronto shall attend one of the judges with the petition, for directions, before it is referred for investigation.

## Rule 706

706. A local referee is entitled to confer or correspond from time to time with the Inspector of titles for advice and assistance on questions of practice or evidence or other questions arising under the Act or under these rules.

## Rule 707

707. Upon the filing of the petition, it shall be delivered or mailed by the proper officer to the referee.

## Rule 705

705. Petitions to be referred to a local referee shall be entered with the Inspector of titles before being filed.

**70.02 Material in Support**

(1) The particulars necessary under the Act to support the petition shall be delivered or mailed by the petitioner or his solicitor to the referee.

(2) The petitioner shall deliver to the referee a plan and description of the property, verified by the affidavit of a qualified land surveyor who has personally inspected the property, and the affidavit shall state the manner in which the land described is indicated upon the plan, the names of the person or persons in actual occupation of the whole or any part thereof, the nature of the buildings upon the property and any evidence of continued possession that might be of assistance in the consideration of the petition.

(3) The petitioner shall also show, by affidavit or otherwise, whether possession has always accompanied the title under which he claims the property, or how otherwise, or shall show some sufficient reason for dispensing with such proof either wholly or in part.

**70.03 Attendance of Petitioner**

Where there is no contest, the attendance of the petitioner, or his solicitor, shall not be required on the examination of the title, except where, for any special reason, the referee directs such attendance.

**70.04 Where Proof of Title is Defective**

If, on such examination, the referee finds the proof of title defective, he shall deliver or mail to the petitioner, or his solicitor, a memorandum of such finding, stating shortly therein what the defects are, and he shall therein state as far as possible all the objections to the title.

70.02 (1)

(2)

(3)

70.03

70.04

## Rule 708

708. The particulars necessary under the Act to support the petition shall be delivered or sent by the petitioner or his solicitor to the referee and shall be forthwith examined and considered by him.

## Rule 709

709.—(1) In every case of an investigation of title to property under the Act, the petitioner shall deliver to the referee a plan and description of the property, verified by the affidavit of a qualified land surveyor who has personally inspected the property, and the affidavit shall state the manner in which the land described is indicated upon the plan, the names of the person or persons in actual occupation of the whole or any part thereof, the nature of the buildings upon the property and any evidence of continued possession that might be of assistance in the consideration of the petition.

(2) The petitioner shall also show, by affidavit or otherwise, whether possession has always accompanied the title under which he claims the property, or how otherwise, or shall show some sufficient reason for dispensing with such proof either wholly or in part.

## Rule 710

710. Where there is no contest, the attendance of the petitioner, or of a solicitor on his behalf, shall not be required on the examination of the title, except where, for any special reason, the referee directs such attendance.

## Rule 711

711. If, on such examination, the referee finds the proof of title defective, he shall deliver or mail to the petitioner, or his solicitor, a memorandum of such finding, stating shortly therein what the defects are, and he shall therein state as far as possible all the objections to the title.

Rule 708

Rule 709 (1)

Rule 709 (2)

Rule 710

Rule 711

NOTES**70.05 Where Good Title is Shown**

(1) Where the referee finds that a good title is shown, he shall prepare the necessary advertisement and, unless the publication thereof is dispensed with under the Act, the advertisement shall be published in a newspaper having a general circulation in the county where the land is situate and in any other newspaper in which the referee thinks it proper to have it inserted.

(2) The referee shall endorse on the advertisement so prepared by him the name of the newspaper or newspapers in which it is to be published, and the number of insertions to be given therein respectively.

(3) Any notice of the petition to be mailed or served under Section 13 of the Act shall be prepared by the referee, and directions shall be given by him as to the persons on whom it is to be served.

**70.06 Where Local Referee is Satisfied**

(1) Where, in the opinion of a local referee, the petitioner is entitled to a certificate or conveyance under the Act and has published and given all notices required, the local referee shall endorse and sign at the foot of the petition the following memorandum: "I am of the opinion that the petitioner is entitled to a certificate of title (or conveyance) as claimed (or subject to the following encumbrances, etc., as the case may be)."

(2) The local referee shall thereupon transmit to the inspector of titles the petition and all papers relating thereto.

(3) The inspector of titles shall thereupon examine the papers carefully and, if he finds any defect in the evidence of title or in the proceedings, he shall, by correspondence or otherwise, point out the defect to the petitioner or his solicitor, or to the local referee, as the case may be, in order that the defect may be remedied before the petition and all papers relating thereto are transmitted to the judge for approval.

70.05(1)  
(2)  
(3)  
70.06(1)

Rule 712  
Rule 712  
Rule 713  
Rule 715

**Rule 712**

712. Where the referee finds that a good title is shown, he shall prepare the necessary advertisement and, unless the publication thereof is dispensed with under the Act, the advertisement shall be published in the Ontario Gazette and in any newspaper or newspapers in which the referee thinks it proper to have it inserted; and, unless otherwise directed by the referee, a copy of the advertisement shall also be put up on the door of the court house of the county in which the land lies, and, unless the nearest post office is in a city, in some conspicuous place in the post office that is situate nearest to the property the title of which is under investigation; and the referee shall endorse on the advertisement so prepared by him the name of the newspaper or newspapers in which it is to be published, and the number of insertions to be given therein respectively, and the period (not less than four weeks) for which the notice is to be continued at the court house and post office respectively.

**Rule 713**

713. Any notice of the application to be served or mailed under section 13 of the Act shall be prepared by the referee, and directions shall in like manner be given by him as to the persons to be served with the notice and as to the mode of serving it.

**Rule 715**

715. Where a person has shown himself, in the opinion of a local referee, to be entitled to a certificate or conveyance under the Act and has published and given all the notices required, the referee shall write at the foot of the petition, and sign, a memorandum to the following effect: "I am of opinion that the petitioner is entitled to a certificate of title (or conveyance) as prayed (or subject to the following encumbrances, etc., as the case may be); and shall transmit the petition (charges prepaid) with the deeds, evidence and other papers before him in reference thereto to the Inspector of Title, who shall examine the papers carefully, and, if he finds any defect in the evidence of title or in the proceedings, he shall, by correspondence or otherwise, point out the defect to the petitioner or his solicitor or to the referee, as the case may be, in order that the defect may be remedied before a judge is attended with the petition and papers for approval.

**PROCEEDINGS FOR  
QUIETING TITLES**

**RULE 70**

**70.07 Where Inspector of Titles or Referee at Toronto is Satisfied**

(1) Where the inspector of titles or referee at Toronto finds that the petitioner is entitled to a certificate of title or a conveyance under the Act and has published and given all the notices required, the inspector of titles or referee at Toronto shall endorse and sign at the foot of the petition a memorandum to the same effect as is required from a local referee.

(2) The inspector of titles or referee at Toronto shall thereupon prepare the certificate of title or conveyance, engross and sign the same in triplicate and shall attend upon the judge therewith and with the petition and all papers relating thereto.

(3) On the certificate or conveyance being signed by the judge, the inspector of titles or referee at Toronto shall deliver or transmit the certificate of title or conveyance to the local registrar at Toronto to be sealed and registered.

(4) The local registrar shall thereupon retain one of the signed certificates or conveyances and shall deliver or transmit the other two, when so sealed and registered, to the petitioner or his solicitor.

(5) Unless the judge otherwise directs, the certificate of title or conveyance shall be dated as of the date of the filing of the petition.

(6) When a certificate of title or conveyance has been granted, the inspector of titles or referee at Toronto may, without further order, deliver on demand to the party entitled thereto, or his solicitor, all deeds and other documents of title filed in connection with the proceeding and shall take his receipt therefor.

<b>70.07(1)</b>	<b>Rule 716(1)</b>
(2)	Rule 716(1)
(3)	Rule 716(1)
(4)	Rule 716(1)
(5)	Rule 716(2)
(6)	Rule 717

**Rule 716**

716.—(1) Where the inspector or referee at Toronto finds that the petitioner has shown himself entitled to a certificate of title or a conveyance under the Act and has published and given all the notices required, he shall write at the foot of the petition, and sign, a memorandum to the same effect as is required from a local referee, and shall prepare the certificate of title or conveyance, and shall engross the same in triplicate on heavy paper of good quality, and shall sign the same at the foot or in the margin thereof, and shall attend one of the judges therewith and with the deeds, evidence and other papers before him in reference thereto; and, on the certificate or conveyance being signed by the judge, the inspector or other referee aforesaid, as the case may be, shall deliver or transmit it to the registrar to be sealed and registered, and the registrar shall retain one of the signed certificates or conveyances and shall deliver or transmit the other two, when so sealed and registered, to the petitioner, his solicitor or agent.

(2) Unless the judge otherwise directs, the certificate shall be dated as of the date of the filing of the petition.

**Rule 717**

717. When a certificate of title has been granted, the inspector or referee may, without further order, deliver, on demand, to the party entitled thereto, or his solicitor, all deeds and other evidence of title, not including affidavits made and evidence given in the matter of the title, and shall take his receipt therefor.

NOTES**\*70.08 Appeal**

The certificate of the inspector of titles or of a referee upon any contest before him shall be filed, and an appeal lies therefrom in the same way as from a report on a reference.

**70.09 Alternative Proceeding by Notice of Application**

(1) Where any person claims to be the owner of land, he may have any particular question that would arise upon a petition under *The Quieting Titles Act* determined in a proceeding commenced by a Notice of Application.

(2) Notice of any such application shall be given to all persons to whom notice would be given under *The Quieting Titles Act*, and the judge has the same power to determine and finally dispose of such particular question as he would have under that Act. It shall not, however, be necessary to comply with the provisions of sub-rule 70.05.

**RULE 71 MENTAL INCOMPETENCY PROCEEDINGS****71.01 Removal to Supreme Court**

(1) Where the respondent in a proceeding under *The Mental Incompetency Act* requires the proceeding to be removed into the Supreme Court, he shall serve a Notice of Removal (Form 71A) upon the applicant and file the same, with proof of service, with the clerk of the county court in which the proceeding was brought, at least 2 days before the return date of the application for the declaration of mental incompetency or incapacity.

(2) Upon filing the Notice of Removal and proof of service thereof, the clerk of the county court shall forthwith transmit the papers to the local registrar of the Supreme Court in the county in which the proceeding was brought.

(3) Within 10 days of service upon him of the Notice of Removal, the applicant shall serve upon the respondent and file a notice of the time and place of the hearing of the proceeding before a judge of the Supreme Court and thereafter the practice and procedure of the Supreme Court shall apply to the proceeding.

**70.09(1)**

71

**71.01****Rule 462a****Rule 610**

610.—(1) Where any person claims to be the owner of land, but does not desire to have his title thereto quieted under *The Quieting Titles Act*, he may have any particular question that would arise upon an application to have his title quieted determined upon an originating notice.

(2) Notice shall be given to all persons to whom notice would be given under *The Quieting Titles Act*, and the court has the same power finally to dispose of and determine such particular question as it would have under that Act, but this does not render it necessary to give the notice required by rule 712.

**Rule 462a**

462a.—(1) Where the respondent in proceedings under *The Mental Incompetency Act* requires the proceedings to be removed into the Supreme Court he shall serve a notice of removal upon the applicant and file the same with proof of service thereof with the clerk of the county or district court in which the proceedings were brought, not later than two days preceding the day of the return of the application for the declaration of mental incompetency or incapability.

(2) Upon filing the notice of removal and proof of service thereof the clerk of the county or district court shall forthwith transmit the papers to the proper office of the Supreme Court in the County or District in which the proceedings were brought.

(3) Within ten days of service upon him of the notice of removal the applicant shall serve upon the respondent and file a notice of the time and place of the hearing of the application before a judge of the Supreme Court and thereafter the practice and procedure of the Supreme Court in effect on March 25th, 1964, shall apply to proceedings coming within this rule. [Amended, O. Reg. 520/78, s. 18.]

**\*71.01**

721. The certificate of the Inspector or of a referee upon any contest before him shall be filed, and an appeal lies from such certificates in the same way as from a master's report.

### 71.02 Application for Confirmation

(1) Where an order has been made by a judge of a county court appointing a permanent committee or propounding a scheme of management or propounding a subsequent scheme not previously confirmed by a judge of the Supreme Court, the order shall be issued and filed with the clerk of the said county court.

(2) Unless the order has been appealed, the applicant shall file with the clerk of the said county court a notice of motion returnable before a judge of the High Court at Toronto for an order confirming the appointment of the committee and the scheme of management, and the clerk shall thereupon transmit the notice of motion, the order and all other papers filed in the proceeding to the local registrar of the Supreme Court at Toronto.

(3) The notice of motion for confirmation shall be filed with the clerk of the said county court at least 10 days prior to the day upon which the motion is returnable.

(4) Upon receipt of the notice of motion and supporting material, the local registrar at Toronto shall place the motion on the appropriate list, and it shall not be necessary for counsel to appear in the first instance.

(5) The order shall be considered by the presiding judge and if, in his opinion, it is proper to confirm the appointment of the committee and the scheme of management, he shall confirm the same by so endorsing the notice of motion and an order, prepared by the solicitor for the applicant, shall be issued and entered in the Supreme Court at Toronto, and a copy thereof shall be filed with the clerk of the county court in which the proceeding was commenced.

(6) Where the presiding judge is not satisfied, he shall state shortly his reasons therefor in writing and either direct an amendment to be made before an order is issued or adjourn the motion and direct the local registrar at Toronto to give notice to the applicant of the adjourned hearing upon which counsel shall appear.

### Rule 462b

462b.—(1) Where an order has been made by a judge of a county or district court appointing a permanent committee or propounding a scheme of management or propounding a subsequent scheme not previously confirmed by a judge of the Supreme Court, the order shall be issued and filed forthwith in the office of the clerk of the said county or district court.

(2) Unless the order has been appealed, the applicant shall lodge with the clerk of the said county or district court a notice of motion returnable before a judge at Toronto for an order confirming the appointment of the committee and the scheme of management and the clerk shall thereupon

transmit the notice of motion, the order and all other papers filed in the proceedings to the Registrar of the Supreme Court at Toronto. (Amended, O. Reg. 620/78, s. 19.)

(3) The notice of motion for confirmation shall be lodged with the clerk of the said county or district court at least ten days prior to the day upon which the motion is returnable.

(4) Upon receipt of the notice of motion and supporting material the Registrar shall place the application on the list of cases for hearing and it shall not be necessary for counsel to appear in the first instance.

(5) The order shall be considered by the presiding judge and if in his opinion it is proper to confirm the appointment of the committee and the scheme of management he shall confirm the same by so endorsing the notice of motion and an order prepared by the solicitor for the applicant shall be issued and entered in the Supreme Court and a copy thereof forthwith shall be filed with the clerk of the county or district court in which the proceedings were commenced.

(6) Where the judge is not satisfied he shall state shortly his reasons therefor in writing and either direct an amendment to be made before an order is issued or adjourn the motion and direct the registrar to give notice to the applicant of the adjourned hearing upon which counsel shall appear.

## 71.03

## NOTES

**71.03 Passing Accounts**

(1) Upon the death of a person who has been found mentally incompetent or mentally incapable under the provisions of *The Mental Incompetency Act*, the accounts of his committee shall be passed by a judge of the county court in which the proceeding is pending upon notice to his executor or administrator.

(2) Where the proceeding has been referred to a master, the accounts of the committee shall be passed by him.

(3) Upon payment over to the executor or administrator of the balance found to be due by the judge or master, as the case may be, and, upon entry of the order or confirmation of the report, the bond given by the committee shall be handed over for cancellation.

**Rule 463****Rule 463**

463. Upon the death of the person who has been found mentally incompetent or mentally incapable under the provisions of *The Mental Incompetency Act* the accounts of his committee shall be passed by a judge of the county or district court in the county or district in which the proceedings are pending, or where the matter has been referred to the Master, by the Master to whom the matter has been referred, upon notice to his executor or administrator, and, upon payment over to the executor or administrator of the balance found to be due by the judge or Master, as the case may be, and upon confirmation of the order or report, the bond given by the committee shall be handed over for cancellation.

NOTES**RULE 72 DIVORCE PROCEEDINGS****72.01 Application of the Rules**

Unless otherwise provided by any statute or by this rule, all of the rules, insofar as they apply to an action, shall apply, with any necessary modification, to a divorce proceeding.

**72.02 Definitions**

In a divorce proceeding, unless the context otherwise requires,

*decree nisi* or *decree absolute* of divorce is a judgment;

*judge* means a judge of the Supreme Court and includes a local judge;

*matrimonial offence* means a matrimonial offence as defined in Section 3 of the *Divorce Act (Canada)*; and

*originating process* includes a petition or a counter-petition against an added respondent by counter-petition.

**Rule 777**

777.—(1) Rules 778 to 815 and Forms 140 to 152 in the Appendix of Forms to the rules apply only to matrimonial causes commenced on or after the day upon which the *Divorce Act (Canada)* comes into force.

(2) Subject to rules 778 to 815 and any Act, all other rules, the forms in the Appendix of Forms to the rules and Tariffs A, B and C shall be applied *mutatis mutandis* to matrimonial causes except as otherwise provided.

(3) Where rules 778 to 815 do not provide for a form, the forms in the Appendix of Forms to the rules shall be employed *mutatis mutandis*.

**Rule 787**

787.—(1) A matrimonial cause shall be commenced by,

(a) the filing with the Registrar or local registrar, as the case may be, of a petition for divorce prepared by the petitioner according to Form 140, and

(b) the issue of a notice of petition prepared by the petitioner according to Form 141,

(c) the filing with the Registrar or local registrar, as the case may be, of a certificate of the marriage or of the registration thereof unless one cannot be produced.

(2) The notice and the petition shall be sealed with the seal of the Supreme Court and the notice shall be signed by the officer issuing the same and shall state the date and place of issue.

(3) True copies of the notice and the petition certified to be such by the petitioner or his solicitor shall be filed with the officer at the time of issue.

(4) Rules 12, 15, 25, 26, 27, 28, and 29 do not apply to matrimonial causes.

**Rule 57**

57. Except after trial, a plaintiff may not move for judgment,

(a) in a matrimonial cause;

(b) in an action to declare the invalidity of a marriage; or

(c) for unliquidated damages, unless on consent or to implement a settlement. [Amended, O. Reg. 36/73, s. 14.]

**Rule 788**

788.—(1) Save where a respondent is being added, the petition and notice of petition may be amended once without leave before the close of pleadings.

(2) Where amended, the petition and notice of petition shall be served upon the respondent.

NOTES

72.03(1)  
(2)  
(3)  
(4)

Rule 780  
Rules 779; 783(1)  
Rule 783(3)  
Rule 782

307

**72.03 Joinder of Parties**

(1) Any person against whom any relief is claimed in a divorce proceeding shall be made a party thereto.

(2) Except as provided in paragraph (4), the name of every person alleged to have been involved in any matrimonial offence shall be pleaded, if the name of that person is known to the party pleading such allegation; but, unless the court otherwise orders no such person need be made a party to the proceeding unless some relief is being claimed against him.

(3) Where the name of such person is subsequently ascertained, the pleadings shall be amended accordingly, and he shall be served with a copy of the amended pleadings as hereinafter provided.

(4) Where it is alleged that the respondent spouse was involved in a matrimonial offence that constitutes a criminal offence for which he has been convicted in a court of competent jurisdiction in Canada, the name of the other person who was involved in such offence shall not be pleaded, nor shall he be made a party to the proceeding unless the court otherwise orders.

**Rule 780**

780. Unless otherwise ordered or provided, the petitioner's spouse and each person alleged to be involved in a matrimonial offence shall be a respondent.

**Rule 779**

779. Subject to rule 783 the name of each person alleged to be involved in a matrimonial offence set out in section 3 of the Divorce Act (Canada) shall be contained in the petition.

783.—(1) Where the name of a person alleged to be involved in a matrimonial offence is unknown to the petitioner, the court or a judge, on being satisfied that all reasonable efforts have been made to ascertain the name, may grant leave to the petitioner to file the petition without adding such person as a respondent.

(2) After a petition has been filed the court may grant leave to amend it by adding a further allegation of involvement in a matrimonial offence of a person whose name is unknown to the petitioner.

(3) Where the order is made after the notice of petition has been served, unless otherwise ordered, the order shall require the amended petition to be served and shall also prescribe the times within which the answer to the amended petition shall be delivered.

**Rule 782**

782. Where the proceedings are based on a matrimonial offence that constitutes a criminal offence for which the respondent spouse has been convicted in a court of competent jurisdiction in Canada, the other person who was involved in such offence shall not be made a respondent unless a judge otherwise orders.

72.04(1)  
72.05(4)

Rule 787  
Rule 784

#### 72.04 Petition

- (1) A divorce proceeding shall be commenced by the issuing of a Petition for Divorce (Form 72A) in the manner provided for the issuing of an originating process.
- (2) In a divorce proceeding, the party commencing the proceeding shall be called the petitioner and the opposite party, the respondent.

#### \* 72.05 Service of Petition

- (1) Unless otherwise ordered or provided, a divorce petition, and all documents required to be served therewith, shall be served on the respondent spouse and the petition shall be served on every other respondent and on every person alleged in the petition to have been involved in a matrimonial offence.
- (2) A respondent shall be served in the manner prescribed for service of originating process.
- (3) A person, other than a party, who is alleged in the petition to have been involved in a matrimonial offence, may be served by mailing a copy of the petition to him at his last known address.
- (4) Where a person who is alleged in a petition to have been involved in a matrimonial offence, other than a party, dies before he has been served with the petition, the petition need not be served on his personal representative.
- (5) A petition shall not be served by the petitioner.

#### Rule 787

- 787.—(1) A matrimonial cause shall be commenced by,
- (a) the filing with the Registrar or local registrar, as the case may be, of a petition for divorce prepared by the petitioner according to Form 140, and
  - (b) the issue of a notice of petition prepared by the petitioner according to Form 141,
  - (c) the filing with the Registrar or local registrar, as the case may be, of a certificate of the marriage or of the registration thereof unless one cannot be produced.
- (2) The notice and the petition shall be sealed with the seal of the Supreme Court and the notice shall be signed by the officer issuing the same and shall state the date and place of issue.
- (3) True copies of the notice and the petition certified to be such by the petitioner or his solicitor shall be filed with the officer at the time of issue.
- (4) Rules 12, 15, 25, 26, 27, 28, and 29 do not apply to matrimonial causes.

#### Rule 784

784. Where a person alleged to be involved in a matrimonial offence has died before the filing of the petition, it is not necessary to make the legal representative of such person a respondent.

#### \* Rule 791

- 791.—(1) Unless otherwise ordered by the court or a judge, the notice of petition, the petition and all papers required to be served therewith shall be served on each respondent personally. (Amended, O. Reg. 284/71, s. 6.)
- (2) Such service shall be made by a person other than the petitioner.
- (3) The person who serves the notice shall, at the time of the service, request each respondent to complete and sign in his presence the acknowledgement of service endorsed on the notice and shall sign his name as witness to any signature thereto.
- (4) The affidavit of service (Form 142) shall state fully the means of knowledge of the deponent as to the identity of the person served and that the respondent served has been requested to complete and sign the acknowledgement of service, giving the result of such request.

(6)  
(7)  
(8)  
72.06

Rule 794  
Rule 793  
Rule 792  
Rule 790

(6) A petition may be served out of Ontario without leave.

(7) Where substituted service of a petition by publication in a newspaper is ordered by the court, the publication shall be according to Form 72B.

(8) Where any person required to be served with a petition cannot be found, the court may dispense with such service if it is satisfied that reasonable efforts have been made to locate such person and that no method of substitutional service is likely to come to his attention.

72.06 Time for Service of Petition

A petition shall be served within six months of the issuing thereof.

Rule 794

794. Service may be made out of Ontario of a notice of petition and a petition.

Rule 793

793. Where service of a petition and notice of petition by publication in a newspaper is ordered, the publication shall be according to Form 142a.

Rule 792

792. The Court or a judge may dispense with service of the notice of petition and other documents on a respondent who cannot be found if no claim other than a claim for dissolution of marriage is made against him, or if made, is abandoned. (Amended, O. Regs. 284/71, s. 7; 933/79, s. 9.)

Rule 790

790. The notice of petition and the petition or the amended notice of petition and the amended petition, as the case may be, shall be served upon the respondent spouse within ninety days of the filing of the petition or the making of the amendment.

12.01(1)  
72.08(1)  
(b)  
(c)  
(2)  
(3)

Rule 795(1)  
Rule 795(2)  
Rule 28  
Rule 28  
Rule 781  
Rules 785(1); 786

#### 72.07 Pleadings

- (1) In a divorce proceeding, pleadings shall consist of the Petition and an Answer (Form 72C) and may include a Reply (Form 72D).
- (2) In a counter-petition for divorce, pleadings shall consist of the Counter-Petition (Form 72E) and an Answer to Counter-Petition (Form 72F) and may include a Reply to Answer to Counter-Petition (Form 72G).

#### 72.08 Answer

- (1) A respondent who wishes to oppose a divorce petition shall deliver an Answer thereto,
- (a) within 20 days after service of the Petition where the respondent is served in Ontario;
  - (b) within 40 days after service of the Petition where the respondent is served elsewhere in Canada or within the United States of America; or
  - (c) within 60 days after service of the Petition where the respondent is served anywhere else in the world.
- (2) Any person, other than a party, who is alleged in a petition to have been involved in a matrimonial offence, may within the time limited for delivery of the Answer, apply to the court to be added as a respondent in the proceeding and for leave to deliver an Answer.
- (3) Where a person who is alleged in a petition to have been involved in a matrimonial offence, other than a party, dies after he has been served with the Petition and before he has been added as a respondent in the proceeding, his personal representative may apply to be added as a respondent therein and for leave to deliver an Answer.

#### Rule 795

795.—(1) A respondent who wishes to oppose a petition shall, within the time prescribed in sub-rule (2), serve and file with proof of service an answer according to Form 143, and when he seeks relief he shall serve and file, within the same time, an answer and counter-petition according to Form 144.

#### (2) An answer shall be served and filed,

- (a) where the notice of petition and the petition are served within Ontario, within twenty days after service thereof inclusive of the day of such service;
- (b) where the notice of petition and the petition are served elsewhere within Canada or within one of the United States of America, within forty days after service thereof, inclusive of the day of such service; and
- (c) in all other cases within sixty days after service thereof inclusive of the day of such service.

#### Rule 28

28.—(1) Where a party is served out of Ontario but elsewhere in Canada or within one of the United States of America, he shall file an appearance within forty days, excluding the day of service, and, within the same time, he shall deliver his statement of defence or his affidavit of merits, as the case may be.

(2) Where a party is served elsewhere than in Canada or one of the United States of America, he shall file an appearance within sixty days, excluding the day of service, and, within the same time, he shall deliver his statement of defence or his affidavit of merits, as the case may be.  
[Amended, O. Reg. 106/75, s. 7.]

#### Rule 781

781. A person named pursuant to rule 779 but not made a respondent may nevertheless apply to the court to be added as a respondent.

#### Rule 786

786. Where the legal representative of a deceased person alleged to be involved in a matrimonial offence has not been made a respondent, such representative or any other person desiring to represent such deceased person may apply to the court for leave to be added as a respondent.

NOTES**72.09 Reply**

A Reply, if any, shall be delivered within 10 days after delivery of the Answer.

**72.10 Counter-Petition**

(1) Where a respondent claims any relief other than dismissal of the petition, with or without costs, he shall do so by way of counter-petition.

(2) Where a respondent counter-petitions against the petitioner, he may join as an added respondent by counter-petition any other person, whether a party to the proceeding or not, who is a necessary or proper party to the counter-petition.

(3) A respondent shall plead his answer and counter-petition in one document to be called an Answer and Counter-petition.

(4) Where there is an added respondent by counter-petition, the Answer and Counter-Petition shall contain a second style of cause showing who is the petitioner by counter-petition and who are the respondents by counter-petition.

(3) Where a respondent alleges in a counter-petition that another person was involved in a matrimonial offence with the petitioner, he shall add a second style of cause in which he is described as "petitioner to counter-petition" and the petitioner and the added party are described as "respondents by counter-petition" and shall deliver his answer and counter-petition within the time limited for the answer and shall serve the same upon the added party together with a notice to respondent added to counter-petition according to Form 146 issued by the registrar and with a copy of the petition within thirty days of the issue of the said notice  
[Amended, O. Reg. 761/73, s. 2.]

## DIVORCE PROCEEDINGS

## RULE 72

## 72.11 Time for Delivery of Answer and Counter-Petition

(1) Where a counter-petition is against a petitioner only, the Answer and Counter-Petition shall be delivered within the time limited for delivery of the Answer in the main proceeding.

(2) Where a counter-petition is against the petitioner and an added respondent by counter-petition, the Answer and Counter-Petition shall be issued within the time limited for delivery of the Answer in the main proceeding, and shall be served,

(a) on the petitioner, within the time limited for delivery of the Answer in the main proceeding; and

(b) on the added respondent by counter-petition, together with a copy of the Petition in the main proceeding, within 30 days thereafter.

(3) Personal service of an Answer and Counter-Petition is not required on the petitioner or on an added respondent by counter-petition who is a respondent in the main proceeding unless such respondent has failed to deliver an Answer in the main proceeding, in which case personal service is required whether or not he has been noted in default in the main proceeding.

(4) An Answer and Counter-Petition shall also be served, together with a copy of the Petition, on every person alleged in the counter-petition to be involved in a matrimonial offence, in the manner prescribed for the service of a petition on any such person.

(3) Where a respondent alleges in a counter-petition that another person was involved in a matrimonial offence with the petitioner, he shall add a second style of cause in which he is described as "petitioner in counter-petition" and the petitioner and the added party are described as "respondent by counter-petition" and shall deliver his answer and counter-petition within the time limited for the answer and shall serve the same upon the added party together with a notice to respondent added to counter-petition according to Form 145 issued by the registrar and with a copy of the petition within thirty days of the issue of the said notice [Amended, O. Reg. 761/73, s. 2.]

## NOTES

### **72.12 Answer to Counter-Petition**

(1) The petitioner shall deliver his Answer to Counter-Petition within the time limited for the delivery of a Reply, if any, in the main proceeding and, where such a Reply is delivered, his Answer to Counter-Petition shall be joined thereto.

(2) An added respondent by counter-petition shall deliver his Answer to Counter-Petition within 20 days after service of the Answer and Counter-Petition.

(3) Any person, other than a party, who is alleged in a counter-petition to have been involved in a matrimonial offence may, within the time limited for the delivery of the Answer to Counter-Petition, apply to the court to be added as a respondent by counter-petition and for leave to deliver an Answer to Counter-Petition.

(4) Where a person who is alleged in a counter-petition to have been involved in a matrimonial offence, other than a party, dies after he has been served with the Counter-Petition and before he has been added as a respondent by counter-petition, his personal representative may apply to be added as a respondent therein and for leave to deliver an Answer to Counter-Petition.

### **72.13 Reply to Answer to Counter-Petition**

A Reply to Answer to Counter-Petition, if any, shall be delivered within 10 days after delivery of the Answer to Counter-Petition.

72.07(1)	Rule 795a(1), (2)
72.14(1)	Rule 795a(2)
(2)	795a(3)
(3)	795a(4)
(4)	795a(5)
(5)	795a(6), (7)
(6)	

#### 72.14 Financial Statement

(1) Where a petition contains a claim for corollary relief, the petitioner shall deliver a Financial Statement (Form 72H) with the Petition and the respondent spouse shall deliver a Financial Statement with the Answer.

(2) Where no claim for corollary relief is made in the Petition, but such a claim is asserted in the Counter-Petition, the petitioner by counter-petition shall deliver a Financial Statement with the Answer and Counter-Petition and the respondent spouse by counter-petition shall deliver a Financial Statement with the Answer to Counter-Petition.

(3) Where a Financial Statement is required to be delivered with a Petition or Counter-Petition or an Answer thereto, the Petition or Counter-Petition or the Answer thereto shall not be accepted by a registrar for issuing or filing without the Financial Statement.

(4) Where a respondent to a Petition or Counter-Petition does not intend to defend a claim for corollary relief, he shall nevertheless deliver his Financial Statement within the time limited for the delivery of his Answer.

(5) Where a respondent to a Petition or Counter-Petition fails to deliver his Financial Statement within the time limited for the delivery of his Answer, the petitioner or counter-petitioner may apply to the court without further notice to the respondent for an order requiring the delivery of such a Statement within the time prescribed by the order.

(6) A party may be cross-examined on his Financial Statement,

- (a) for use upon a pending motion for interim relief, in which case the cross-examination may be used in evidence at the trial in the same manner as an examination for discovery; or
- (b) on his examination for discovery.

#### Rule 795a

795a.—(1) Where a petition contains a claim for corollary relief under the Divorce Act (Canada), the petitioner shall serve and file a statement of property and a statement of financial information with the petition and the respondent spouse shall deliver a statement of property and a statement of financial information with his answer.

(2) Where the petition does not contain a claim for corollary relief under the Divorce Act (Canada); but such a claim is made by counter-petition, the petitioner by counter-petition shall serve and file a statement of property and a statement of financial information with his answer and counter-petition and the respondent to the counter-petition shall serve and file a statement of property and a statement of financial information with his answer to the counter-petition.

(3) Where a statement of property and a statement of financial information are required to be served and filed with a petition, a counter-petition or an answer, the Registrar or local registrar shall not issue or file the petition, the counter-petition or the answer, as the case may be, without the statement of property and the statement of financial information.

(4) A respondent to a petition or counter-petition who does not intend to defend a claim for corollary relief under the Divorce Act (Canada), shall serve and file a statement of property and a statement of financial information within the period of time prescribed by these rules for the serving and filing of an answer.

(5) Where a respondent to a petition or a counter-petition fails to deliver a statement of property and a statement of financial information within the period of time prescribed by these rules for the serving and filing of his answer, the court on motion without notice may order the respondent to the petition or counter-petition to file and serve the statements and in the order may specify the period of time within which the respondent must comply with the order.

(6) A party may cross-examine an opposite party on the statement of property and the statement of financial information of the opposite party.

(7) A cross-examination on a statement of property and a statement of financial information may be used,

- (a) on a motion for interim relief; and
- (b) at trial, in the same manner as an examination for discovery.

(8) The statement of property and the statement of financial information referred to in these rules shall be in Form 10 and Form 10a respectively. [New, O. Reg. 833/79, s. 10.]

NOTES**72.15 Children**

(1) Where there are *children of the marriage*, as defined by Section 2 of the *Divorce Act (Canada)*, particulars thereof shall be pleaded in the Petition or Counter-Petition, in which case,

- (a) the Petition or Counter-Petition and all documents required to be served therewith, shall be served on the Official Guardian at Toronto forthwith after service thereof on the respondent spouse;
- (b) all other pleadings shall be served on the Official Guardian within the time limited by the rules for service thereof on the parties to the proceeding;
- (c) one copy of the report of the Official Guardian and the supporting affidavit, if any, shall be served by the Official Guardian on the solicitor for each spouse and, where there is no such solicitor, on each spouse personally, or by mailing a copy thereof addressed to him at his last known address, within 60 days of the service on the Official Guardian of the Petition or Counter-Petition, as the case may be, and the Official Guardian shall file a copy of his report, together with proof of such service forthwith in the office where the Petition was issued;
- (d) either spouse may dispute any statement in the report or any supporting affidavit by serving a concise statement of the nature of such dispute on the other spouse and on the Official Guardian at Toronto, and by filing the same, together with proof of such service, within 15 days of the service of the report on him;

**Rule 796**

796. Where a petition or counter-petition contains particulars of children of the marriage as defined by section 2 of the *Divorce Act (Canada)*,

(a) the petition or counter-petition and any other papers required to be served therewith shall be served upon the Official Guardian at Toronto after service thereof on the respondent spouse;

(b) all other pleadings shall be served upon the Official Guardian within the times limited by the rules for service upon the parties to the proceedings;

(c) three copies of the report of the Official Guardian and the supporting affidavit, if any, shall be served on the petitioner within sixty days of the service of the petition upon the Official Guardian; [Amended, O. Reg. 437/73, s. 2.]

(d) the report of the Official Guardian and the supporting affidavit, if any, together with proof of service thereof on the petitioner shall be filed forthwith in the office where the notice of petition was issued:

NOTES

## RULE 72.15 CONTINUED

- (e) no Petition or Counter-Petition shall be tried until all disputes have been filed or the time for filing disputes has expired or has been waived by the consent of the parties filed;
  - (f) a person who has made an affidavit verifying the report of the Official Guardian is not liable to be cross-examined thereon except by leave; and
  - (g) the Official Guardian has the right to discovery in respect of any matter relating to the custody, maintenance and education of a child to whom this rule applies, whether or not any such matter is in issue in the proceeding.
- (2) Where a petition or counter-petition contains a claim for the custody or access to any child of the marriage as defined by Section 2 of the *Divorce Act (Canada)*, recourse may be had to the provisions of Rule 73.04.
- (e) the petitioner shall serve forthwith one of such copies and the supporting affidavit, if any, upon the other spouse personally or by ordinary mail to his last known address unless such service is dispensed with by the court, and shall forthwith file proof thereof in the said office;
  - (f) either spouse may dispute any statement in the report or the supporting affidavit, if any, by serving a concise statement of the nature of such dispute upon the other spouse, unless such service is dispensed with by the court, and upon the Official Guardian at Toronto, and by filing the same, together with proof of such service, within fifteen days of the service of the report on him;
  - (g) the court may in its discretion order that the report and the supporting affidavit, if any, and any dispute filed be served upon the co-respondent or upon any person not a party to the proceedings and may give such directions as it deems necessary;
  - (h) unless the Official Guardian is the applicant, he shall be served with four days notice of any application under clause (g);
  - (i) the service mentioned in clauses (f) and (g) shall be personal unless the person to be served is represented in the proceedings by a solicitor or unless the court otherwise orders;
  - (j) except with leave or where the spouses have delivered notices that the report is not being disputed, no petition shall be heard and a registrar shall not put a petition on a daily list for hearing until the disputed have been filed or the time for filing disputes has expired;
  - (k) [Revoked, O. Reg. 301/70, s. 25.]
  - (l) prior to the hearing a copy of the report and any dispute filed shall be placed with the record required by rule 248;
  - (m) rule 229 does not apply to a person who has made an affidavit verifying the report of the Official Guardian; and
  - (n) the Official Guardian has the right to particulars, discovery and production under the rules in all matters touching upon the custody, maintenance and education of a child to whom this rule applies, whether or not any such matter is in issue in the proceedings. [Amended, O. Regs. 38/73, s. 33; 437/73, s. 2.]

NOTES

**72.16 Intervention Before Decree Nisi**

(1) At any time prior to the granting of the Decree Nisi, the Attorney General, on notice to all parties, may apply to a judge for leave to intervene for the purpose of showing why the Decree Nisi should not be granted.

(2) Where the judge grants leave to intervene, he shall give such directions with respect to the participation of the Attorney General in the proceeding as may seem just.

**72.17 Place of Trial**

(1) The petitioner shall name the place of trial in the petition and the place to be named shall be the place where the court normally sits in the county in which either spouse ordinarily resides or, where the petitioner is resident out of Ontario, the county in which the respondent spouse ordinarily resides.

(2) The proceeding shall be tried at the place so named, unless otherwise ordered on the motion of the petitioner or of any respondent who has delivered an Answer. On any such motion, the applicant must show that it is just and convenient that the proceeding be tried elsewhere.

**Rule 797**

797.—(1) At any time prior to the granting of the decree nisi Her Majesty's Proctor may, upon the direction of the Attorney General, apply to a Judge presiding at the proceeding for leave to intervene for the purpose of showing why the decree nisi should not be granted.

(2) Where the judge grants leave to intervene he shall give directions as to appearance and procedure with respect to Her Majesty's Proctor and such directions shall include leave to Her Majesty's Proctor to subpoena witnesses to attend at the hearing.

72.18(1)  
(2)  
72.19(1)

Rule 799(1)  
Rule 799(2)  
Rule 799(3)

#### Rule 799

799.—(1) A petitioner shall include in the notice of petition a notice that the proceeding will be set down for hearing at the place proposed by the petitioner in his petition which shall designate either a sittings of the High Court or, on and after the 1st day of July, 1971, a Matrimonial Causes Sittings, and that in default of appearance or answer such proceeding may be so set down without further notice. [Amended, O. Reg. 284/71, s. 9(a).]

(2) A proceeding shall be set down for hearing as proposed by the petitioner in his petition but a judge of the High Court, on the application of a petitioner or a respondent who has filed an answer, may order that the proceedings be transferred to a sittings of the High Court or to a Matrimonial Causes Sittings, as the case may be, and in such event the applicant shall forthwith serve all other parties to the proceeding with a Notice of Transfer according to Form 147 together with a copy of the transferring order and file the same with proof of service within ten days of the date of the entry of the order or, in default of the applicant so doing, any other party may transfer the hearing in accordance with the order. [New, O. Reg. 284/71, s. 9(c).]

(3) In all other cases notice of hearing shall be served, and where the respondent is not represented by a solicitor, the service shall be personal unless otherwise ordered (Form 146). [Amended, O. Reg. 284/71, s. 9(b).]

#### 72.18 Trial Before Local Judge or High Court

(1) The petitioner, in addition to naming the place of trial, shall specify in the petition whether the proceeding will be set down for trial before the local judge of the High Court, or at the regular sittings of the High Court, at the place of trial named in the petition.

(2) At any time before the commencement of the trial, whether or not the proceeding has been set down for trial, the petitioner, or any respondent who has delivered an Answer, may apply,

(a) to a judge of the High Court for an order that the proceeding be tried at a regular sittings of the High Court at the place of trial named in the petition, instead of before a local judge of the High Court; or

(b) to a local judge of the High Court at the place of trial named in the petition for an order that the proceeding be tried before a local judge of the High Court at the place of trial named in the petition, instead of at a regular sittings of the High Court; provided that, where the proceeding is defended, such order may only be made upon the consent of all parties.

#### 72.19 Notice of Trial

(1) Where a proceeding is set down for trial as proposed by the petitioner in the Petition and is not defended, it shall not be necessary to serve or file a Notice of Trial.

(2) In all other cases, a Notice of Trial shall be served and filed.

NOTES

72.20 (1)  
(2)  
(3)  
(4)  
(5)

Rule 800  
Rule 801 (2)  
Rule 801 (1)  
Rule 803 (1)  
Rule 803 (2)

319

72.20 Trial

(1) No Petition shall be tried until a certificate or report issued subsequent to the filing of the Petition pursuant to regulations under the *Divorce Act (Canada)* as to prior pending Petitions presented by either spouse has been received by the registrar and attached to the record.

(2) Where, before proceeding to the hearing of the evidence, a judge grants an adjournment of the trial under sub-section 1 of Section 8 of the *Divorce Act (Canada)*, the application for resumption of the trial under sub-section 2 of the said section shall be by Notice of Motion and may be made to any judge.

(3) Where, after proceeding to the hearing of the evidence, a judge grants an adjournment of the trial under sub-section 1 of Section 8 of the *Divorce Act (Canada)*, the application for resumption of the trial under sub-section 2 of the said section shall be by Notice of Motion to the same judge.

(4) On the trial of any divorce proceeding, the judge may adjourn the trial for any reason to such time and place as may seem just and, in a proper case, may direct that the registrar forthwith give notice of the proceeding, the state thereof and the reasons of the court for such direction to the Attorney General.

(5) Where such notice is given, the Attorney General shall appear, in person or by counsel, on the adjourned trial and make his submissions and otherwise participate in the proceedings to the extent he may deem necessary and the judge may allow.

Rule 800

800. No petition shall be heard and a registrar shall not put a petition on a daily list for hearing until a certificate or report issued subsequent to the filing of the petition pursuant to regulations under the *Divorce Act (Canada)* as to prior pending petitions presented by either spouse has been received by him.

Rule 801

801.—(1) Where, after proceeding to the hearing of evidence, a judge grants an adjournment of the proceedings under subsection (1) of section 8 of the *Divorce Act (Canada)*, the application for resumption of the proceedings under subsection (2) of the said section shall be to the same judge.

(2) Where, before proceeding to the hearing of evidence, a judge grants an adjournment of the proceedings under subsection (1) of the said section, the application for resumption of the proceedings under subsection (2) of the said section shall be to any judge. [Amended, O. Reg. 520/78, s. 47.]

Rule 803

803.—(1) In any matrimonial cause, in addition to the power of adjournment under subsection (1) of section 8 of the *Divorce Act (Canada)*, the court may direct that the hearing be adjourned to such time and place as the court deems best and in proper cases may direct that the registrar forthwith give notice of the proceedings and the state thereof and the court's reasons for such direction to Her Majesty's Proctor, and may, in its discretion, direct any party to deliver to Her Majesty's Proctor and a copy of the pleadings, of examinations for discovery, if any, and of any evidence adduced, or of such parts of any of them as the court deems proper.

(2) Where such notice is given Her Majesty's Proctor shall appear before the court and, subject to any direction of the Attorney General, make his submissions and otherwise participate in the proceedings as the court may allow.

72.22(1)  
(2)  
72.23

#### 72.21 Reference to a Family Law Commissioner

(1) Any judge of the High Court may refer to a Family Law Commissioner any question or issue arising under the *Divorce Act (Canada)* relating to corollary relief for inquiry and report.

(2) Where a reference is directed under the preceding paragraph, the Family Law Commissioner shall inquire into any question or issue referred to him and he shall report back to the judge directing the reference in such manner and at such time as the judge may direct.

(3) Any party who appeared before the Commissioner shall have the right to be heard when the judge is considering the report, and shall be served with a copy of the report and with notice of the time and place appointed for so doing.

#### 72.22 Decree Nisi

(1) In a Decree Nisi (Form 72 I) the name of a co-respondent shall not appear in the style of cause unless some relief has been granted against him.

(2) Unless otherwise ordered by the trial judge, the party to whom a Decree Nisi has been granted shall forthwith serve a copy thereof on the party against whom it was granted by mailing the same addressed to him at his last known address.

#### 72.23 Showing Cause After Decree Nisi

(1) During the period between the granting of the Decree Nisi and the granting of the Decree Absolute, any person, including the Attorney General, may apply to a judge for leave to show cause why the Decree Nisi should not be made absolute.

(2) A copy of the Notice of Motion shall be served on the Attorney General, unless he is the applicant.

(3) The judge may dismiss the motion or may rescind the Decree Nisi or may direct the trial of an issue and may give such directions and impose such terms as may seem just.

Rule 804(1), (2)  
Rule 805(1)  
Rule 809

#### Rule 803a

803a.—(1) Any Judge of The High Court of Justice may refer any question or issue arising under the *Divorce Act* relating to corollary relief to a Family Law Commissioner for inquiry and report.

(2) The duties of a Family Law Commissioner in any proceeding under the *Divorce Act* will be to inquire into any question or issue referred to such Commissioner by a judge of the High Court and report to the judge in such manner and at such times as shall be laid down by the judge from time to time. Provided that the parties appearing before the Commissioner shall have notice of the time of considering the report by the judge and the right to be heard and, provided further, that any decree or order made after the Inquiry or report of any Family Law Commissioner shall be the decree or order of the judge of the High Court. [New, O. Reg. 1/79, s. 4.]

#### Rule 804

804.—(1) Subject to sub-rule (2), a decree nisi shall be according to Form 148 and a decree absolute granted at the hearing shall be according to Form 149 and a decree absolute other than one granted at the hearing shall be according to Form 152.

(2) Unless relief is granted against a co-respondent, the name of such co-respondent should not appear in the style of cause in either the decree nisi or the decree absolute. [Amended, O. Reg. 285/71, s. 20.]

#### Rule 805

805.—(1) Unless service is dispensed with by the judge who presides at the hearing, copies of the decree granted at the hearing shall be served personally, or by ordinary mail addressed to the respondent spouse at such address as the said judge shall direct in the decree, and where rule 780 applies, to the Official Guardian.

#### Rule 809

809.—(1) During the period between the granting of the decree nisi and the granting of the decree absolute, any person, including Her Majesty's Proctor, may give notice of desire to show cause why the decree nisi should not be made absolute by reason of the same having been obtained by collusion or by reason of the reconciliation of the parties or by reason of any other material facts.

(2) Such notice shall set forth the ground upon which it is alleged that the decree nisi should not be made absolute and shall be filed in the office in which the proceedings were commenced and be served upon the petitioner and upon Her Majesty's Proctor.

(3) The person giving such notice and any party to the proceedings and Her Majesty's Proctor may apply on notice to a judge for directions.

(4) The judge may dismiss the application to show cause or may rescind the decree nisi or may require further inquiry to be made or may direct the trial of an issue and may direct the delivery of pleadings and particulars and the production of documents for the purpose of such trial and may permit examinations for discovery and may permit parties and the person who gives the notice and Her Majesty's Proctor to subpoena witnesses for such trial, or may make such further orders as the judge thinks fit.

NOTES

## 72.24 Decree Absolute

(1) A motion to make a Decree Nisi absolute shall be made to a judge by filing in the office in which the proceeding was commenced, on any day after the expiration of the period that must intervene before the Decree Nisi may be made absolute, a notice of motion, together with the original Decree Nisi, or a certified copy thereof, and proof of service thereof on the party against whom it was granted, unless such service was dispensed with.

(2) Any such motion shall be supported by an affidavit, sworn after the expiration of the period that must intervene before the Decree Nisi may be made absolute, as to whether or not,

- (a) an appeal from the Decree Nisi is pending or any appeal taken has been abandoned or dismissed;
- (b) an order has been made extending the time for appealing from the Decree Nisi and, if so, whether such time has expired without an appeal having been taken; and
- (c) a Notice of Motion to show cause why the Decree Nisi should not be made absolute has been filed or served.

(3) Within 10 days thereafter the registrar shall cause the Notice of Motion and the material filed in support thereof to be presented to a judge sitting anywhere in Ontario, who may pronounce a Decree making the Decree Nisi absolute, without the appearance of counsel, and so endorse the Notice of Motion.

## Rule 806

806.—(1) An application by a petitioner for decree absolute shall be made to the court by filing in the office in which the proceedings were commenced on any day after the expiration of the period that must intervene before the decree nisi may be made absolute,

- (a) a notice of application according to Form 150;
- (b) the original decree nisi or certified copy thereof together with proof of service unless such service has been dispensed with; and
- (c) an affidavit of the applicant sworn within fifteen days of the filing of the notice of application setting out whether,

  - (i) any appeal to the Court of Appeal for Ontario or to the Supreme Court of Canada is pending;
  - (ii) any petition for divorce has been served on him by the respondent spouse, and
  - (iii) the spouses are reconciled.

(2) The registrar shall thereupon search or cause a search to be made of the court records to ascertain whether,

- (a) an appeal from the decree nisi is pending or any appeal taken has been abandoned or dismissed;
- (b) an order has been made extending the time for appealing from the decree nisi and, if so, whether such time has expired without an appeal having been taken; and
- (c) a notice of desire to show cause why the decree nisi should not be made absolute has been filed.

(3) The registrar shall issue a certificate according to Form 151 as to such search and within ten days thereafter, upon requisition of the petitioner, shall present or cause to be presented the notice of application, the petitioner's affidavit and such certificate to a judge sitting anywhere in Ontario, whereupon such judge may pronounce a decree absolute without the appearance of counsel in the first instance and so endorse the notice of application. [Amended, O. Reg. 520/78, s. 48.]

(4) Where a judge decides that a decree absolute should not be granted in the first instance he shall adjourn the application and direct that notification of such adjournment be given by the registrar to the petitioner and may direct that the petitioner serve notice of the application on any person.

- (5) Where the application is adjourned,
  - (a) the judge shall endorse on the notice of application his reasons therefor;
  - (b) the papers shall be returned to the office where the proceedings were commenced, unless the judge otherwise directs.

## RULE 72.24 CONTINUED

(5)  
(6)  
(7)Rule 804(1)  
Rule 808  
Rule 807

(4) Where a judge decides that a Decree Nisi should not be made absolute without the appearance of counsel, he shall adjourn the motion and direct that notice of such adjournment be given by the registrar to the applicant and may direct that the applicant serve notice of the motion on any other person.

(5) The style of cause in the Decree Absolute (Form 72J) shall be the same as in the Decree Nisi.

(6) Where a Decree Absolute has been granted, the registrar shall prepare, sign and enter the Decree.

(7) Where a party to whom a Decree Nisi has been granted fails to apply to have the Decree made absolute within one month after the earliest date on which he could have done so, the opposite spouse may apply to have the Decree Nisi made absolute, on notice to the party to whom the Decree Nisi has been granted, but without filing proof of service of the Decree Nisi. Where the Decree Nisi has not been settled, signed or entered, the judge, on the hearing of the motion, may direct this to be done.

## Rule 804

804.—(1) Subject to sub-rule (2), a decree nisi shall be according to Form 148 and a decree absolute granted at the hearing shall be according to Form 149 and a decree absolute other than one granted at the hearing shall be according to Form 152.

## Rule 808

808.—(1) Where a decree absolute has been granted, the registrar shall prepare the decree, and where it was granted at a place other than the place where the proceedings were commenced, shall certify and forward the same together with the papers forthwith to the registrar at the office where the proceedings were commenced.

(2) All decrees absolute shall be issued forthwith by the registrar in the office in which the proceedings were commenced.

## Rule 807

807.—(1) An application by a respondent spouse for decree absolute under section 18(4) of the Divorce Act (Canada) shall be by motion to a judge sitting at the place where the proceedings were commenced or under rule 237 or, where applicable, under rule 239 on at least seven days notice to the other spouse and shall be supported by,

- (a) a certified copy of the decree nisi, if issued;
- (b) his affidavit setting out whether,
  - (i) any appeal to the Court of Appeal for Ontario or to the Supreme Court of Canada is pending;
  - (ii) he has filed a petition for divorce; and
  - (iii) the spouses are reconciled;
 and
- (c) the certificate required by rule 806(3). [Amended, O. Reg. 284/71, s. 10.]

(2) Where the decree nisi has not been issued the court may upon such motion direct that the same be issued.

NOTES

72.25(1)  
(2)  
(3)  
(4)  
(5)

Rule 775g(1)  
Rule 775g(2)  
Rule 775g(3)  
Rule 775g(4)  
Rule 775g(5)

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**72.25 Corollary Relief**

(1) A Notice of Motion for interim relief under the *Divorce Act (Canada)* may be served with a Petition or Counter-Petition or at any time thereafter.

(2) At the hearing of a motion for interim relief under the *Divorce Act (Canada)*, the court shall consider whether or not a pre-trial conference is necessary or desirable at that stage of the proceeding and may conduct a pre-trial conference before disposing of the motion.

(3) Rule 50 shall apply, with any necessary modification, to a pre-trial conference under paragraph (2).

(4) Except with the consent of the parties, the judge or officer who conducts the pre-trial conference under paragraph (2) shall not proceed with the motion for interim relief.

(5) In exercising his discretion as to costs, the judge or officer who hears a motion for interim relief under paragraph (1) shall take into account any offer to settle the claim for interim relief or the failure to make such an offer.

**Rule 775g**

775g.—(1) A notice of motion for interim relief under the Act or the *Divorce Act (Canada)* or for interim disbursements may be served with an originating document or at any time thereafter. [New, O. Reg. 216/78, s. 19.]

(2) A judge or master who hears a motion referred to in subrule 1 shall consider whether or not a pre-trial conference is necessary or desirable at that stage of the proceeding and may conduct a pre-trial conference before disposing of the motion.

(3) Subrules 1, 2, 4 and 5 of rule 244 apply, with necessary modifications, in respect of a pre-trial conference under subrule 2.

(4) Except with the consent of the parties, a judge or master who conducts a pre-trial conference under subrule 2 shall not participate further in the proceeding.

(5) In exercising his discretion as to costs, a judge or master who hears a motion for interim relief under subrule 1 shall take into account the absence of or the making, terms and disposition of an offer under rule 775i to settle the claim for interim relief. [New, O. Reg. 933/79, s. 7.]

## RULE 72.25 (CONTINUED)

(6)

(7)

(8)

(9)

(10)

Rule 775h  
 Rule 499a  
 Rule 812(1)  
 Rule 812(2)  
 Rule 812(3)

(6) Where a party fails to comply with an order for interim relief under the *Divorce Act (Canada)* and the court is satisfied as to the ability of such party to comply with the order, the trial of the proceeding may be postponed or an order may be made striking out any pleading or affidavit of the party in default.

(7) An appeal from an order for interim relief in respect of any claim made in a divorce proceeding shall be to the Court of Appeal without leave, and shall be heard by one justice of appeal.

(8) An application to vary or rescind an order for corollary relief granted at the trial shall be made to a judge sitting at the place named by the applicant in his Notice of Application, unless otherwise ordered by the court.

(9) An applicant for an order to vary or rescind an order for corollary relief granted at the trial, other than an order for access to children, shall deliver a financial statement in Form 72H with the Notice of Application.

(10) The judge to whom such an application is made may order the respondent to deliver a financial statement in Form 72H within such time as may be prescribed in the order.

## Rule 775h

775h. Where a party does not comply with an order for interim relief under the Act or the *Divorce Act (Canada)* or for interim disbursements, the court, if satisfied of the ability of the party to pay, may postpone the trial of the application or may order any pleading or affidavit of the party to be struck out. [New, O. Reg. 216/78, s. 19.]

## Rule 499a

499a.—(1) An appeal from an interim order for corollary relief under the *Divorce Act (Canada)* shall be to the Court of Appeal without leave and shall be heard by a single Justice of appeal. [O. Reg. 116/72, s. 7.]

## Rule 812

812.—(1) An application to vary or rescind an order for corollary relief granted at the hearing shall be by motion to a Judge sitting at the place where the proceedings were commenced or under rule 237 or, where applicable, under rule 239 on at least seven days notice.

(2) An applicant for an order to vary or rescind an order for corollary relief, other than access, shall serve and file a statement of property and a statement of financial information.

(3) The Judge to whom such an application is made may order the respondent to serve and file a statement of property and a statement of financial information and in the order may specify the period of time within which the respondent must comply with the order. [Amended, O. Regs. 284/71, s. 12; 933/79, s. 11.]

NOTES

72.26  
72.27

Rule 813  
Rule 810

**72.26 Registration of Orders for Corollary Relief**

(1) Where an order has been made by any other superior court in Canada under Sections 10 or 11 or the *Divorce Act (Canada)*, the registration of such order pursuant to Section 15 of the said Act shall be effected by filing an exemplification or certified copy of the order in the office of the Registrar of the Supreme Court, whereupon it shall be entered as an order of the court.

(2) The exemplification or certified copy of the order may be filed with the Registrar by forwarding it to him by ordinary mail, accompanied by,

- (a) a written request that it be registered pursuant to the said Act; and
- (b) a certified cheque or money order in the amount of \$5.00.

**72.27 Costs**

On the taxation of costs in a divorce proceeding, the proceeding shall be treated as uncontested, and such costs shall be taxed in accordance with Tariff "B" unless the trial judge otherwise directs.

**Rule 813**

**813.**—(1) Where an order has been made by any other superior court in Canada under sections 10 or 11 of the *Divorce Act (Canada)*, the registration of such order pursuant to section 15 of the said Act shall be effected by filing an exemplification or certified copy of the order in the office of the Registrar of the Supreme Court, whereupon it shall be entered as an order of the court.

(2) The exemplification or certified copy of the order shall be filed with the Registrar by delivering the same by hand or by forwarding the same by ordinary mail accompanied by,

- (a) a written request that it be registered pursuant to the said Act; and
- (b) a certified cheque or money order in the amount of \$5.

**Rule 810**

**810.** The costs in a matrimonial cause are in the discretion of the presiding judge, and shall be recoverable in the same way as in ordinary actions and, unless otherwise ordered, shall be on the Supreme Court scale whether the proceeding is heard at a Matrimonial Causes Sitting or at a High Court Sitting. [Amended, O. Reg. 244/71, s. 11.]

73.01  
73.02 (1)  
(2)

Rule 775a (1)  
Rule 775a (2)  
Rule 775b

## RULE 73 FAMILY LAW REFORM ACT PROCEEDINGS

### 73.01 Definitions

In this rule,

*Act* means *The Family Law Reform Act, 1978*;

*applicant* means a person making an application under the Act and includes a plaintiff, a plaintiff by counter-claim, a petitioner and a counter-petitioner for divorce;

*originating process* means a statement of claim, counter-claim, petition for divorce, counter-petition for divorce or notice of application that initiates an application under the Act;

*respondent* includes a defendant; and

*responding document* means a statement of defence, a defence to counterclaim, an answer to a petition for divorce, an answer to a counter-petition for divorce or an affidavit in opposition to a notice of application.

### 73.02 How Commenced

(1) An application under the Act may be commenced by the filing of an originating process.

(2) Where the Ministry of Community and Social Services or a municipality makes an application under the Act for an order for the support of a dependant, the applicant shall serve upon the dependant a copy of the originating process.

### Rule 775a

775a.—(1) In rules 776a to 778i,

- (a) "Act" means *The Family Law Reform Act, 1978*;
  - (b) "applicant" means a person making an application under the Act and includes a plaintiff, a plaintiff by counter-claim, a petitioner and a counter-petitioner for divorce;
  - (c) "originating document" means a writ of summons, counter-claim, petition for divorce, counter-petition for divorce or originating notice that initiates an application under the Act;
  - (d) "respondent" includes a defendant; and
  - (e) "responding document" means a statement of defence, statement of defence to counter-claim, answer to a petition for divorce, answer to a counter-petition for divorce or appearance to an originating notice. [Amended, O. Reg. 520/78, s. 46.]
- (2) An application under the Act may be made by,
- (a) writ of summons;
  - (b) counter-claim;
  - (c) petition for divorce;
  - (d) counter-petition for divorce; or
  - (e) originating notice. [New, O. Reg. 216/78, s. 10.]

### Rule 775b

775b. Where the Minister of Community and Social Services or a municipality makes an application under the Act for an order for the support of a dependant, the applicant shall serve upon the dependant a copy of the originating document. [New, O. Reg. 216/78, s. 10.]

NOTES

73.03(1)  
 (2)  
 (4)  
 (5)

Rules 775c(1), (2); 775d  
 Rule 775c(3)  
 Rule (4)  
 Rule 775d(2)

**73.03 Statements of Financial Information**

(1) Where an application is made under Sections 4, 18 or 21 of the Act, a Financial Statement (Form 72H) shall be delivered with the originating process, together with a Notice to File Financial Statement (Form 73A).

(2) A party served with the Financial Statement of the applicant and Notice to File Financial Statement shall deliver his own Financial Statement with his responding document.

(3) Where a Financial Statement is required to be delivered with an originating process or a responding document, the originating process or the responding document shall not be accepted by the registrar for filing without the Financial Statement.

(4) Where a respondent does not intend to defend an application, he shall nevertheless deliver his Financial Statement within the time limited for the delivery of his responding document.

(5) Where a respondent fails to comply with a Notice to File Financial Statement the applicant may apply to the court without further notice to the respondent for an order requiring the delivery of such a statement within the time prescribed by the order.

**Rule 775c**

775c.—(1) Where an application is made under section 4 of the Act, a statement of property in Form 10 shall be delivered with the originating document.

(2) Where an application is made under section 18 or section 21 of the Act, a statement of financial information in Form 10a shall be delivered with the originating document.

(3) A party served with a statement of property or a statement of financial information shall deliver a statement of property or a statement of financial information, as the case requires, with his responding document.

(4) Where a party does not intend to defend an application, he shall deliver a statement of property or a statement of financial information, as the case requires, within the time period provided as follows:

**Rule 775d**

775d.—(1) An applicant may serve a notice in Form 20a with his originating document or at any time thereafter on a respondent who is required to deliver a statement of property or statement of financial information.

(2) Where a respondent has been served with a notice under sub-rule 1 and does not comply with Rule 775c, the court, on motion by the applicant, may make an ex parte order requiring the respondent to deliver the statement. [New, O. Reg. 216/78, s. 19.]

NOTES

(6)

(7)

Rule 775e

Rule 775c(5)

## RULE 73.03 CONTINUED

(6) A party may be cross-examined on his Financial Statement,

- (a) for use upon the hearing of the application where the proceeding was commenced by a Notice of Application; or
- (b) for use upon a pending motion for interim relief, in which case the cross-examination may be used in evidence at the hearing of the application as if it were taken for that purpose, or at the trial in the same manner as an examination for discovery; or
- (c) on his examination for discovery.

(7) In a divorce proceeding, this sub-rule only applies to the petitioner and the respondent spouse in a petition or counter-petition.

## Rule 775e

775e. A party may be cross-examined upon his statement of property and statement of financial information and the cross-examination may be used in evidence,

- (a) on any application for interim relief; and
- (b) at trial, in the same manner as an examination for discovery. [New, O. Reg. 216/78, s. 19.]

(5) This Rule does not apply to a person alleged to be involved in a matrimonial offence and added as a party under Rule 780. [New, O. Reg. 216/76, s. 19.]

## NOTES

### 73.04 Custody and Access Disputes

#### (1) *Separate Representation for Children*

In any proceeding where the custody of or access to a child is in issue, the court may, where it appears necessary in the interests of the child so to do, order that any such child be separately represented in a proceeding by a solicitor appointed by the court.

#### (2) *Mediation*

- (a) In any proceeding where the custody of or access to a child is in issue, the court may, at any time and upon such terms as may seem just, appoint a qualified person to act as a mediator for the purpose of assisting the parties to resolve, by agreement, any issue concerning the custody of, or access to, a child.
- (b) Any communication made in the course of the mediation process shall be privileged and no report of the mediator shall be admitted in evidence nor shall he be called as a witness at the trial or hearing of the proceeding.

#### (3) *Assessment*

- (a) In any proceeding where the custody of or access to a child is in issue, the court may, at any time and upon such terms as may seem just, appoint a qualified person to assess the needs of the child and the ability of any persons to meet those needs to whom the custody of or access to the child might be awarded, and order the child and any such persons to attend before the person so appointed.

NOTES

## RULE 73.04 CONTINUED

- (b) Any person appointed by the court to make such an assessment shall file a full report of his assessment with the court and serve a copy thereof on each of the parties to the proceeding within the time prescribed by the order appointing him.
- (c) Any such person may be a witness in the proceeding and, if called as a witness, shall be subject to cross-examination by any party to the proceeding.

(4) *Remuneration*

The court may fix the remuneration of any person appointed under this sub-rule, and shall determine the liability of the parties for the remuneration of any such person.

## 73.05 Place of Trial or Hearing

Except where the application is made in a divorce proceeding, the place of trial or hearing of an application under the Act shall be governed by the provisions of Rule 45 and, for the purposes of that rule, an application under the Act made by notice of application shall be treated as if it was an action, whether it is made in the Supreme Court or in a county court.

## 73.06 Reference to a Family Law Commissioner

The provisions of Rule 72.21 shall apply, with any necessary modification, to any question or issue arising under the Act.

## Rule 775f

775f.—(1) Notwithstanding Rule 245, the place of trial of an application under the Act shall be,

(a) where the applicant is resident in Ontario, in a county in which any of the parties ordinarily resides;

(b) where the applicant is resident outside Ontario, in the county in which any of the respondents ordinarily resides,

unless otherwise ordered upon motion of any party.

(2) Where an application under the Act is made in a county court by originating notice, a party may apply under Rule 769 to change the place of hearing. [New, O. Reg. 218/78, s. 19.]

NOTES

73.07 (1)  
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 (5)  
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Rule 775g (1)  
 Rule 775g (2)  
 Rule 775g (3)  
 Rule 775g (4)  
 Rule 775g (5)  
 Rule 775h

**73.07 Interim Relief**

(1) A Notice of Motion for interim relief under the Act may be served with an originating process or at any time thereafter.

(2) At the hearing of a motion for interim relief under the Act, the court shall consider whether or not a pre-trial conference is necessary or desirable at that stage of the proceeding and may conduct a pre-trial conference before disposing of the motion.

(3) Rule 50 shall apply, with any necessary modification, to a pre-trial conference under paragraph (2).

(4) Except with the consent of the parties, the judge or officer who conducts the pre-trial conference under paragraph (2) shall not proceed with the motion for interim relief.

(5) In exercising his discretion as to costs, the judge or officer who hears a motion for interim relief under paragraph (1) shall take into account any offer to settle the claim for interim relief or the failure to make such an offer.

(6) Where a party fails to comply with an order for interim relief under the Act and the court is satisfied as to the ability of such party to comply with the order, the trial or hearing of the application may be postponed or an order may be made striking out any pleading or affidavit of the party in default.

**Rule 775g**

775g.—(1) A notice of motion for interim relief under the Act or the Divorce Act (Canada) or for interim disbursements may be served with an originating document or at any time thereafter. [New, O. Reg. 216/78, s. 19.]

(2) A judge or master who hears a motion referred to in subrule 1 shall consider whether or not a pre-trial conference is necessary or desirable at that stage of the proceeding and may conduct a pre-trial conference before disposing of the motion.

(3) Subrules 1, 2, 4 and 5 of rule 244 apply, with necessary modifications, in respect of a pre-trial conference under subrule 2.

(4) Except with the consent of the parties, a judge or master who conducts a pre-trial conference under subrule 2 shall not participate further in the proceeding.

(5) In exercising his discretion as to costs, a judge or master who hears a motion for interim relief under subrule 1 shall take into account the absence of or the making, terms and disposition of an offer under rule 775f to settle the claim for interim relief. [New, O. Reg. 933/79, s. 7.]

**Rule 775h**

775h. Where a party does not comply with an order for interim relief under the Act or the Divorce Act (Canada) or for interim disbursements, the court, if satisfied of the ability of the party to pay, may postpone the trial of the application or may order any pleading or affidavit of the party to be struck out. [New, O. Reg. 216/78, s. 19.]

Rule 775*j*Rule 775*j*

775*j*.—(1) Where a proceeding is transferred to a court having other jurisdiction under subsection 3 of section 2 of this Act, the proceeding shall be deemed to be an action and shall continue in that court without duplication of any steps taken prior to the transfer unless that court orders otherwise.

(2) A court to which a proceeding is transferred may, on motion, give directions for the conduct of the proceeding.

(3) Any interim order made in a proceeding prior to a transfer to a court having other jurisdiction shall remain in force according to its terms unless that court orders otherwise. [New, O. Reg. 216/78, s. 19.]

## 73.08 Where Proceeding is Transferred

(1) Where a proceeding is transferred to a court having other jurisdiction under sub-section 2 of Section 2 of the Act, the proceeding shall continue in that court without duplication of any steps taken prior to the transfer unless that court otherwise directs.

(2) A court to which a proceeding is transferred may, on application, give directions for the conduct of the proceeding.

(3) Any interim order made in a proceeding prior to a transfer to a court having other jurisdiction shall remain in force according to its terms, unless the court otherwise orders.

NOTES**73.09 Appeal to County Court from Provincial Court**

(1) An appeal to a county court under the Act shall be made by notice of appeal served upon all parties whose interests are affected by the appeal within 15 days after the date of the order appealed from.

(2) The notice shall state the relief asked for and shall set forth the grounds of appeal and no other grounds may be argued except by leave of the court.

(3) The appellant shall, at least 10 days before the hearing of the appeal, file with the clerk of the appropriate county court and serve upon each respondent a record containing,

- (a) an index;
- (b) the notice of appeal;
- (c) the order appealed from and any reasons given by the judge who made the order;
- (d) a concise statement, without argument, of the facts and law relied on by the appellant;
- (e) a transcript of the evidence;
- (f) such other material as is necessary for the due hearing of the appeal.

(4) Each respondent shall, at least 3 days before the hearing of the appeal, file with the clerk and serve on each of the other parties to the appeal one copy of a concise statement, without argument, of the facts and law relied on by the respondent.

(5) A judge of the county court may, before or at the hearing of the appeal, dispense with compliance with this rule either in whole or in part.

**Rule 775k****Rule 775k**

775k.—(1) An appeal to a county court under the Act shall be made by notice of appeal served upon all parties whose interests are affected by the appeal within fifteen days after the date of the order appealed from.

(2) The notice shall state the relief asked for and shall set forth the grounds of appeal and no other grounds may be argued except by leave of the court.

(3) The appellant shall on or before the tenth day prior to the hearing of the appeal file with the clerk of the court and serve upon each respondent a record containing copies of documents in the following order:

1. An index.
2. The notice of appeal.
3. The order appealed from and any reasons given by the judge who made the order.
4. A concise statement, without argument, of the facts and law relied on by the appellant.
5. A transcript of the evidence.
6. Such other material as is necessary for the due hearing of the appeal.

(4) Each respondent shall on or before the third day prior to the hearing of the appeal file with the clerk and serve upon each of the other parties one copy of a concise statement, without argument, of the facts and law relied upon by the respondent.

(5) A judge of the county court may, before or at the hearing of the appeal, dispense with compliance with this Rule either in whole or in part.  
[New, O. Reg. 216/8, s. 19.]

NOTES**73.10 Warrant for Arrest**

The warrant for the arrest of a debtor or respondent referred to in Section 24 of the Act shall be in Form 73B.

**73.11 Recognizance**

(1) A recognizance entered into under an order made pursuant to Section 34 of the Act shall be in Form 73C and shall be entered into before the registrar or such other officer of the court as a judge may direct.

(2) Where a party is in breach of a condition of the recognizance, a judge, on the application of an opposite party or of the Attorney General, may order that a Writ of Seizure and Sale be issued to enforce the recognizance.

**Rule 7761**

7761.—(1) A recognizance entered into under an order made under section 34 of the Act shall be in Form 88 and shall be entered into before the registrar or clerk of the court or such other officer of the court as a judge may direct.

(2) Where a party is in breach of a condition of the recognizance, the court, on application by an opposite party or the Attorney General, may order that a writ of execution be issued to enforce the recognizance. [New. O. Reg. 520/78, s. 46a.]

NOTES**RULE 74 CHILD WELFARE ACT PROCEEDINGS****74.01 Definition**

In this rule,

*Act* means *The Child Welfare Act, 1978.*

**74.02 Appeals to a County Court**

(1) An appeal to a county court under Sections 43 and 84 of the Act shall be made by notice of appeal served by the appellant within 30 days after the making of the decision being appealed upon the clerk of the court that made the decision and filed, with proof of service, with the clerk of the county court within 5 days after such service.

(2) Upon the filing of the notice of appeal, the appellant shall mail a copy of the notice of appeal to,

(a) all other persons entitled to appeal the decision; and

(b) in the case of an appeal under Section 43 of the Act, all other persons entitled to notice of a hearing under sub-section 7 of Section 28 of the Act who appeared at the hearing.

(3) The notice of appeal shall state the relief asked, and shall set forth the grounds of appeal, and no other grounds may be argued except by leave of the court.

## NOTES

## RULE 74.02 CONTINUED

(4) The record on the appeal shall contain the material prepared for the purpose under the rules of the provincial courts (family division) and sent to the county court by the court that made the decision, and shall include,

- (a) an index;
- (b) a copy of the notice of appeal;
- (c) a copy of the decision being appealed and any reasons given by the court that made the decision;
- (d) a transcript of the evidence; and
- (e) such other material as is necessary for the hearing of the appeal.

(5) The appeal shall be heard within 30 days after the filing of the transcript of the evidence.

(6) Subject to sub-section 7 of Section 43 and sub-section 5 of Section 84 of the Act, a judge of the county court may dispense with compliance with this sub-rule either in whole or in part.

Rule 775m

775m.—(1) In this Rule "Act" means The Child Welfare Act, 1978.  
 (2) An appeal to a county court under section 43 or 84 of the Act shall be made by notice of appeal served by the appellant within 30 days after the making of the decision being appealed upon the clerk of the court that made the decision and filed with the clerk of the county court within 5 days after service.

(3) Upon the filing of the notice of appeal, the appellant shall forward by ordinary mail a copy of the notice of appeal to,  
 (a) all other persons entitled to appeal the decision; and  
 (b) in the case of an appeal under section 43 of the Act, all other persons entitled to notice of a hearing under subsection 7 of section 28 of the Act who appeared at the hearing.

(4) The notice shall state the relief asked and shall set forth the grounds of appeal and no other grounds may be argued except by leave of the court.

(5) The record of the appeal shall contain the material prepared for the purpose under the rules of the provincial courts (family division) and sent to the county court by the court that made the decision and shall include,

- (a) an index;
- (b) the notice of appeal;
- (c) the decision being appealed and any reasons given by the court that made the decision;
- (d) a transcript of the evidence; and
- (e) such other material as is necessary for the hearing of the appeal.

(6) The appeal shall be heard within 30 days after the filing of the transcript of the evidence.

(7) Subject to subsection 7 of section 43 and subsection 5 of section 84 of the Act, a judge of the county court may dispense with compliance with this rule either in whole or in part. [New, O. Reg. 251/79, s. 2.]

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- 75.01(1)  
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**OFFICES AND OFFICERS****RULE 75 OFFICE OF THE ACCOUNTANT****75.01 Payment into Court**

(1) All money to be paid into court shall be paid into the Canadian Imperial Bank of Commerce at Toronto or into some branch of that bank or into some other chartered bank designated for that purpose from time to time by the Lieutenant Governor in Council.

(2) Any person paying money into court shall obtain from the Accountant or the appropriate registrar a direction to the bank to receive the money.

(3) Any person applying for a direction to the bank shall file with the Accountant or the appropriate registrar a certified or authenticated copy of the judgment, order or report under which the money is payable. Where the direction to the bank is obtained elsewhere than in Toronto, such documents shall be sent to the Accountant forthwith.

(4) On receiving the money, the bank shall give a receipt therefor in duplicate. One copy of the receipt therefor in duplicate. One copy of the receipt shall be delivered to the person making the deposit, and the other shall be mailed or delivered to the Accountant the same day.

(5) Any person paying money into court is entitled to credit therefor as of the date on which it was deposited.

- Rules 731; 772(1)  
 Rule 732(1)  
 Rule 732(2), (3)  
 Rule 734  
 Rule 733

**Rule 731**

731. Money to be paid into court shall be paid into The Canadian Imperial Bank of Commerce at Toronto or in some branch of it or into a chartered bank being its agent in Ontario, and in no other way.

**Rule 772**

772.—(1) Money to be paid into a county court or surrogate court shall be paid into a chartered bank designated for that purpose from time to time by the Lieutenant Governor in Council.

**Rule 732**

(2) The person applying for a direction or cheque shall leave a duplicate thereof, and the judgment or order under which the money is payable, together with a copy thereof and of the report where necessary, and is to be verified by an officer in the Accountant's office, and to be retained by the Accountant.

(3) If the direction is obtained elsewhere than in Toronto, these papers, with the necessary postage for their retransmission, shall be sent to the Accountant forthwith.

**Rule 734**

734. The bank, on receiving the money, shall give a receipt therefor in duplicate, and one copy shall be delivered to the party making the deposit and the other shall be posted or delivered the same day to the Accountant.

**Rule 733**

733. The person paying money into court is entitled to credit therefor as of the date on which it was deposited in the bank.

## NOTES

75.02(1)  
 (2)  
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Rule 735(2)  
 Rule 738  
 Rule 737(3) : 740

## 75.02 Payment out of Court

(1) Any person entitled to payment of money out of court shall file with the Accountant a request therefor in writing, together with a certified or authenticated copy of the judgment, order or report entitling him to the money and, where there is a right of appeal therefrom, an affidavit that the time limited for appeal has expired and that no appeal has been set down.

(2) Where costs are directed to be paid out of money in court, the solicitor for the party entitled to receive the costs is entitled to have the cheque drawn in his favour upon filing with the Accountant an affidavit by the solicitor that he is entitled to receive such costs, that he has not been paid his costs or any part thereof, and that the costs, in respect of which payment is sought, are justly due to him. If there has been a change in solicitor during the course of the litigation, that fact shall be shown in the affidavit, and the consent of both solicitors shall be filed.

(3) Unless otherwise ordered, any money in court to the credit of a minor and to which he is entitled on attaining his majority shall be paid out to him with accrued interest upon application to the Accountant supported by an affidavit proving the age and identity of the minor to the satisfaction of the Accountant.

## Rule 735

735.—(1) Money shall be paid out of court upon the cheque of the Accountant, countersigned by an officer of the court or other person designated by the Finance Committee, and every cheque shall first be initialed by the assistant accountant or chief clerk.

(2) The person entitled to a cheque shall produce and leave with the Accountant a practice thereof, together with the orders and reports entitling him to the money and an affidavit that the time limited for appeal has expired and no appeal has been set down. [Amended, O. Reg. 285/71, s. 17.]

## Rule 738

738. Where costs are directed to be paid out of money in court; the solicitor of the party entitled to receive the costs is entitled to have the cheque drawn in his favour upon filing with the Accountant an affidavit stating,

(a) that he is entitled to receive such costs; and  
 (b) that he has not been paid his costs or any part thereof, and that the costs, payment of which is sought, are justly due to him,

and, if the solicitor has been changed in the course of the litigation, that fact shall be shown in the affidavit, and the consent of both solicitors shall be filed.

## Rule 737

(3) Money paid in to court under this rule to the credit of infants shall be paid out to them when they attain their majority.

## Rule 740

740. Where money is in court to the credit of an infant, it shall be paid out of court to him with accrued interest without further order upon his attaining his majority, unless otherwise ordered.

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 (6)

## NOTES

### RULE 75.02 CONTINUED

(4) Where money is in court to the credit of a person under disability, it may be paid out upon filing with the Accountant a certified or authenticated copy of the fiat of a judge who may, in the fiat, direct payment of the costs of the application to the solicitor and dispense with the affidavit required by paragraph (2).

(5) Where money or securities in court are to be paid out or transferred to a person named in the judgment, order or report, such money or securities or any portion thereof for the time being remaining unpaid or untransferred may, on proof to the satisfaction of the Accountant of the death of such person whether before, on, or after the date of the judgment, order or report, and that his personal representatives are entitled thereto, be paid or transferred to such personal representatives or the survivors or survivor of them.

(6) Where money or securities in court are to be paid out of court or transferred to the personal representative of any person, such money or securities may, upon proof to the satisfaction of the Accountant of the death of any of them whether before, on or after the date of the judgment, order or report, be paid to the survivors or survivor of them.

Rules 226; 741(1), (3)  
 Rule 729  
 Rule 728

#### Rule 226

226. Where an infant or a mentally incompetent person is a defendant or interested in a fund in court, no order in any way affecting his interest shall be made without notice to his guardian ad litem or committee.

#### Rule 741

741.—(1) Where money is in court to the credit of an infant or mentally incompetent person, it may be paid out upon the fiat of a judge without formal order. [Amended, O. Reg. 520/78, s. 40.]

(2) Such fiat shall be prepared by the Official Guardian and may be signed either by the Judge or the Registrar or the Clerk, as the case may be, and shall be entered at length in the order book, and the fiat or copy to be verified by the Accountant shall be deposited with the Accountant. [Amended, O. Reg. 520/78, s. 41.]

(3) The judge may in his discretion fix and direct payment of the costs of the application to the solicitor and dispense with the affidavit required by rule 738.

#### Rule 729

729. Where money or securities in court are to be paid out or transferred to a person named in the order or judgment or named or to be named in any report, the same, or any portion thereof for the time being remaining unpaid or untransferred, may, on proof to the satisfaction of the Accountant of the death of such person whether before, on, or after the date of the order or judgment and that his personal representatives are entitled thereto, be paid or transferred to such personal representatives or the survivors or survivor of them.

#### Rule 728

728. Where money or securities in court are to be paid out of court or transferred to the personal representatives of a person, the same may, upon proof to the satisfaction of the Accountant of the death of any of them whether before, on, or after the date of the order, be paid to the survivors or survivor of them.

NOTES

75.03(1)  
75.04

Rule 726  
Rule 730

**75.03 Discharge of a Mortgage**

(1) Any person entitled to the discharge of a mortgage made to or vested in the Accountant may leave with the Accountant the required discharge with a request that it be executed.

(2) The Accountant shall satisfy himself that the money secured by the mortgage has been paid in full and that the proposed discharge is in proper form whereupon the discharge shall be executed by him.

(3) After executing the discharge, the Accountant shall deliver up all deeds and documents relating to the mortgage in his possession, in return for a receipt therefor, and assign any policy of insurance held by him as collateral security for the mortgage to the person entitled to the discharge or as he by writing directs.

**75.04 Stop Order**

(1) Any person claiming to be interested in, or to have a lien or charge upon, or an assignment of any money or securities in court, or invested in the name of the Accountant or any portion thereof or claiming to have the same applied towards the satisfaction of any judgment or execution against the person to whose credit such moneys or securities stand, or for whose benefit the same are held by the Accountant may, upon filing an affidavit verifying his claim, apply to the court without notice for a Stop Order (Form 75A) directing that such money or securities shall not be paid out or dealt with, except upon notice to the applicant.

(2) Any person who has obtained an order under paragraph (1), may apply to the court, on notice to all interested persons, for an order directing payment out.

**Rule 726**

726.—(1) Any person entitled to the discharge of a mortgage made to or vested in the Accountant may leave with the Accountant the required discharge with a request that it be executed.

(2) The Accountant shall thereupon certify as to the payment of the money secured by the mortgage, and the matter shall in such case be re-

**Rule 730**

730.—(1) Any person claiming to be interested in, or to have a lien or charge upon, or an assignment of, any money or securities in court, or invested in the name of the Accountant, or any portion thereof, or claiming to have the same applied towards the satisfaction of any judgment or

execution against the person to whose credit such moneys or securities stand, or for whose benefit the same are held by the Accountant may, upon an affidavit verifying his claim, apply ex parte for an order directing that such money or securities shall not be paid out or dealt with except upon notice to him (Form 73).

(2) Where moneys are standing in Court to the credit of any party, a person, having obtained the Order in sub-rule (1) may, on notice to all interested persons apply to the Court for an Order directing payment out. (Amended, O. Reg. 3278, s. 5.)



